TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 137.

J. C. LEAGUE, PLAINTIFF IN ERROR,

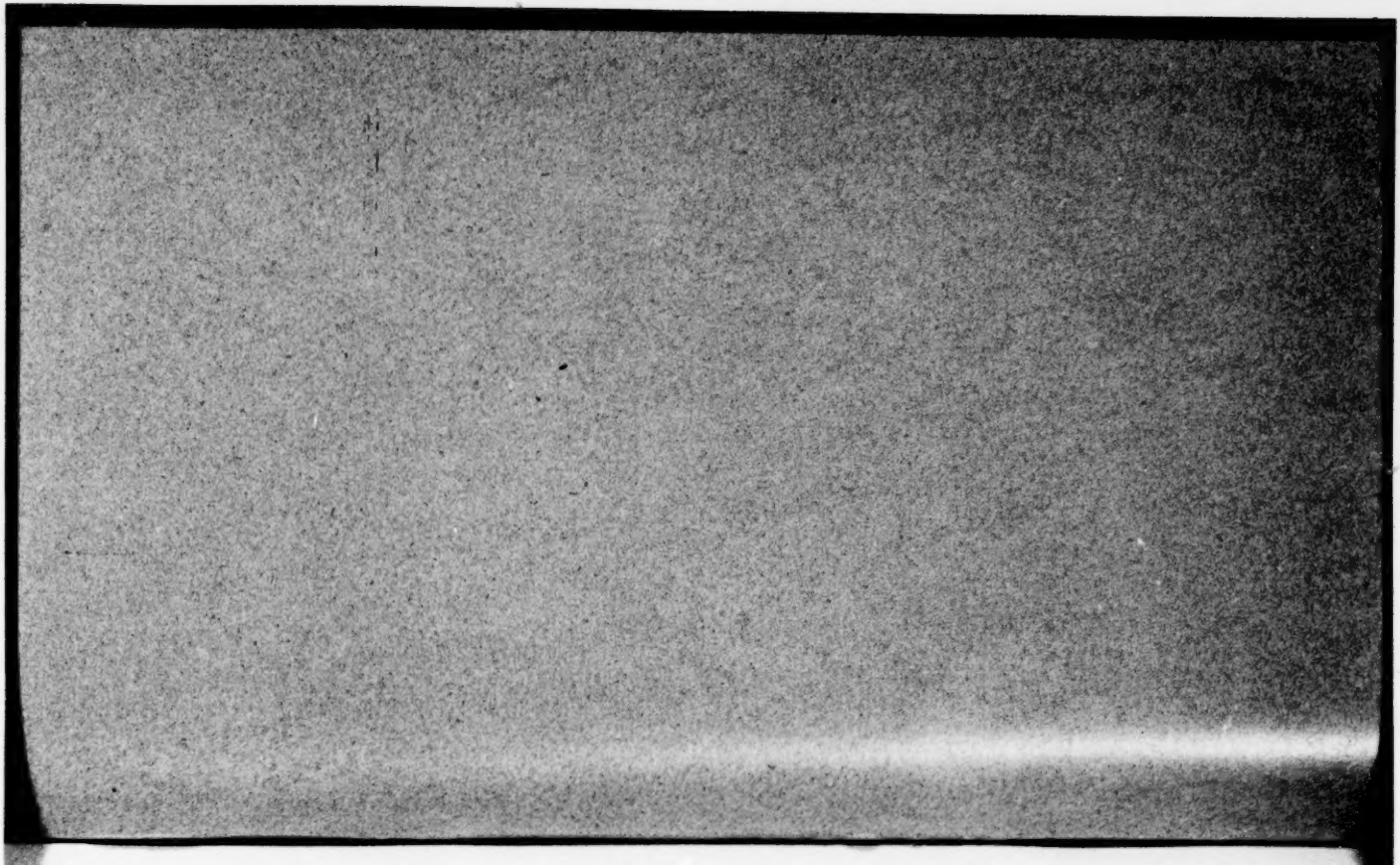
vs.

THE STATE OF TEXAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TEXAS.

FILED AUGUST 17, 1900.

(17,877.)



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1 THE STATE OF TEXAS, }
County of San Augustine. }

At a term of the district court begun and holden at San Augustine, before the Hon. Tom C. Davis, and ending on the 9th day of September, A. D. 1899, the following case came on for trial, to wit:

THE STATE OF TEXAS, Plaintiff, }
vs.
J. C. LEAGUE, Defendant. }

Plaintiff's Amended Original Petition.

THE STATE OF TEXAS, }
County of San Augustine. }

In the District Court, San Augustine County, Texas.

To the Honorable Tom C. Davis, judge of the second judicial district, said State and county:

The State of Texas, hereinafter styled plaintiff, leave of the court being obtained, amends her original petition filed in this cause August 6th, 1898, and, amending, says that J. C. League, hereinafter styled defendant — plaintiff avers:

1st. This suit is instituted by authority and order of the commissioners' court of said county, in pursuance of an act of the twenty-fifth legislature of the State of Texas entitled "An act to amend an act entitled 'An act to provide for the collection of taxes heretofore, and that may hereafter be levied, making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes since January 1st, 1885, which may have been returned delinquent or reported sold to the State or to any county, city, or town for the tax due thereon and not redeemed, or which may hereafter be returned delinquent or reported sold to the State or to any county, city, or town, to satisfy the lien thereon, as enacted by the regular session of the
2 twenty-fourth legislature, being chapter five *a* of title CIV of the Revised Civil Statutes of 1895, relating to delinquent taxes, and to repeal all laws in conflict with this act."

2nd. That the defendant resides in Galveston county, State of Texas.

3rd. Plaintiff further avers that the defendant is justly indebted to the State of Texas and the county of San Augustine in the sum of thirteen hundred and five *dollars* and $\frac{87}{100}$ dollars (1,305.87 dollars), on account of taxes, interest, penalties, and costs, to wit: For the taxes and interest due on the lands hereinafter described for the following years, to wit, for the year- 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1894, 1895, 1896, and the interest and costs and penalties accrued or accruing thereon, by reason of the sale thereof to the State for the non-payment of taxes, aggregating the

sum of thirteen hundred and five and $\frac{87}{100}$ dollars, which said indebtedness more fully appears and is itemized and specified in the tabulated sheet hereto attached, marked Exhibit "A," and made a part hereof.

4th. Plaintiff further avers that the taxes herein sued for are due to the State of Texas and county of San Augustine, were duly and legally levied and assessed in pursuance to the constitution and laws of said State, and that said several sums of money are long since past due and payable, and, though often thereto requested, the defendant has wholly failed and refused to pay the same, or any part thereof, to the plaintiff's damage in the sum of five thousand dollars.

5th. Plaintiff further avers that the said several sums of money due and owing said State and county as aforesaid are a charge and lien upon the following-described land and real estate, to wit: Fourteen sections of S. P. R. R. certificates numbered as follows, viz:

19*y*, abst. No. 265; 20*y*, abst. No. 268; 24*y*, abst. No. 263; 27*y*, abst. No. 275; 28*y*, abst. No. 264; 29*y*, abst. No. 261; 30*y*, abst. No. 276; 31*y*, abst. No. 260; 32*y*, abst. No. 277; 33*y*, abst. No. 269; 34*y*, abst. No. 262; 35*y*, abst. No. 270; 36*y*, abst. No. 271; 39*y*, abst. No. 279; 40*y*, abst. No. 267; 37*y*, abst. No. 278, and also certificate 38*y*, abst. No. 488 and 486, located in two tracts, said whole sections containing 640 acres each, and said section 38*y* located in two tracts; one contains 428⅔ acres; the other 114½ acres; also one-half section located by virtue of certificate No. 40*y*; and plaintiff further avers that the taxes assessed against said lands, as herein set forth, for the years aforesaid were assessed against same for the years above named as the property of M. S. Blanch and James Turner and Cooper and Turner, and as the property of unknown owners, as will be seen by referring to "*exibets*" hereto attached, and that this defendant during the year 1889 became the owner of said lands, and that a part of said taxes, as shown by said "*exibets*," were a lien upon said lands prior to the ownership of this defendant, and a part subsequent to the ownership of this defendant, and plaintiff further avers that defendant is now the owner of said lands, and has rendered the same for taxes, situated in the county of San Augustine, State aforesaid.

6th. Plaintiff further avers that the commissioners' court of said San Augustine county, in said State, in pursuance of the terms and provisions of said act of the twenty-fifth legislature, caused the collector of taxes for said county to prepare a list of all the lands, lots, and parts of lots situated in San Augustine county which had been sold to the State of Texas for taxes since the 1st day of January, 1885, or which had been returned delinquent since the said 1st day of January, 1885, and which had not been redeemed, to be recorded in the delinquent-tax record of said county, showing when the lands or lots were reported sold or delinquent, and the name of the owner at the time of such sale or delinquency, when known, the number of acres, and the amount of the taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year, as shown *as shown* by the records in the tax collector's office, and corrections of errors and omissions as to

descriptions of such land were made as required by law and more fully appears by reference to said exhibit, and its *pro rata* share of taxes, costs, and penalties in bulk assessments *were* apportioned to each tract, lot, or parcel of land, and thereupon said list was certified to by the county judge and recorded by the county clerk.

4-22

7th. Upon the completion of said delinquent-tax record the commissioners' court of said county caused the same to be published in a newspaper published in San Augustine county, to wit, the Red Land Express, for three consecutive weeks. A copy of said list as so published was by said commissioners' court filed with — county clerk of said county, as required by law.

8th. Plaintiff avers that it appears from said delinquent-tax record that the lands herein described are therein embraced, and it appears therefrom and it is a fact that the same were sold for the taxes due thereon for the year 1884, and the amount of taxes levied against said land then and thereafter is in said delinquent-tax record stated and shown with the other facts required to be shown by section three of said act, and is shown, stated, and itemized as therein shown by said Exhibit "A," hereto attached and made a part hereof, as aforesaid.

9th. Plaintiff further avers that fully twenty days after the publication of said notice the commissioners' court filed a list of lands so advertised, showing the number of years for which taxes are due and which tax remains unpaid, with the county clerk of San Augustine county, and it is shown in said Exhibit "A" that the lands hereinbefore described were embraced in said list and advertised, as aforesaid, and thereupon the commissioners' court authorized and required this suit to be filed in the name of the State of Texas for the recovery of said several sums of money and for the foreclosure of such lien.

10th. Premises considered, plaintiff prays that the defendant be cited in due form of law and for judgment for all taxes, interest, penalties, and costs, and the lien be in all things foreclosed, and that the lands be sold to satisfy said judgment, and for such other relief to which the State may be entitled under the law and the facts; and will ever pray.

JOHN THOMSON,
County Attorney of San Augustine County, Texas.

THE STATE OF TEXAS, }
County of San Augustine. }

Personally appeared before the undersigned authority John Thomson, who, being duly sworn, says that he is the attorney bringing this suit, and that the averments contained in said foregoing petition are true to the best of the knowledge and belief of the affiant.

JOHN THOMSON.

Sworn to and subscribed before me on this the 7th day of Sept., A. D. 1899.

W. J. GARRETT,
Clerk Dist. Court, San A. Co., Tex.

Filed the 7th day of Sept., 1899.

W. J. GARRETT,
Clerk Dist. Court, S. A. Co., Texas.

* * * * * * *

23 *Defendant's Original Answer.*

In the District Court of San Augustine County, August Term, 1899.

THE STATE OF TEXAS
vs.
J. C. LEAGUE. } No. 1559.

The defendant, J. C. League, by his attorney, demurring to plaintiff's petition, says that the same is insufficient in law to entitle plaintiff to maintain its suit, and of this defendant prays judgment of the court; and for special causes of demurrer defendant says that—

1st. Plaintiff's petition does not set forth any facts to show that the property therein described was assessed for taxes as the property of this defendant or that defendant is sued as a subsequent purchaser or as an incumbrancer whose rights have accrued subsequent to the lien for said taxes.

24 2nd. Said petition does not show that defendant is the owner of the lands therein described or that he has any claim or right or title in or to said lands.

3rd. Said petition does not set forth any facts to show that defendant claims the premises described in said petition in privity with or under the persons named as owners in said petition and exhibits.

4th. Said petition is without authority of law in so far as it prays for a judgment against this defendant for the alleged taxes and costs of suit.

5th. The allegations in the 8th paragraph of said petition to the effect that the lands described in said petition were "sold for the taxes of the year 1884 (or were returned delinquent for taxes since the first day of January, 1885)," is ambiguous and in the alternative, and petition does not show to whom the lands were sold, nor does it show whether the suit is based on the fact that said land had been sold for delinquent taxes or on the fact that the taxes claimed were simply returned on the delinquent lists.

6th. It appears from the plaintiff's petition that the lands therein described have been sold to the State and its lien thereby lost, and its claim for taxes for years subsequent to 1884 is an equitable and not a legal claim.

7th. Plaintiff's petition, in so far as plaintiffs seeks to enforce its alleged lien for taxes by a second sale of said land to enforce collection of taxes for which said lands had been previously sold and

bid in by the State, is without authority of law, and the acts of the legislature of Texas on which this suit is based is, in so far as it provides for such second sale, retroactive and void, and said suit thereunder is an attempt to deprive defendant of his property without due process of law.

8th. The 10 per cent. penalty claimed in said petition is without authority of law.

9th. The claim in said petition for taxes of 1884 is without authority of law.

10th. The claim in said petition for interest on the alleged
25 taxes is without authority of law.

11th. The claim in said petition that the interest on the taxes accruing prior to the date when this property was assessed as the property of this defendant constitute a lien on said lands which can be enforced against this defendant is without authority of law.

BLOUNT & GARRISON,
ROB'T M. FRANKLIN,
Attorney for J. C. League.

And for answer in this behalf defendant denies all and singular the allegations of plaintiff's petition, and, further answering, defendant shows that he purchased the lands described in plaintiff's petition and exhibits about the year 1889, and that said lands have been sold by the collector of taxes of San Augustine county for 1884 taxes and for taxes of subsequent years, and they have been in every instance bid in by the collector of taxes for the State of Texas in obedience to the laws of said State, and the officers and agents of said State are attempting in this suit and by their demands on this defendant, made under and by authority of alleged laws of said State enacted long after said sales were made, to ignore said sales and avoid the legal effect of said sales, and said State by its said pretended legislation and by its officers and agents is endeavoring to deprive this defendant of his said lands acquired by him after said land had been sold and bought in by said State. Wherefore defendant prays that he may go hence with his costs.

ROB'T M. FRANKLIN AND
BLOUNT & GARRISON,
Attorney for J. C. League.

THE STATE OF TEXAS, }
County of San Augustine. }

Before the undersigned authority on this day personally appeared Rob't M. Franklin, who, being by me duly sworn, on oath says that the averments in the foregoing petition are true to the best of his knowledge and belief, and that he is the attorney and agent
26 of the defendant, J. C. League, named in said petition.

ROB'T M. FRANKLIN.

Sworn to and subscribed before me this September 2nd, 1899.

W. J. GARRETT,
District Clerk.

Filed September 2nd, 1899.

W. J. GARRETT,
Dist. Clerk.

Plaintiff's Trial Amendment.

In the District Court of San Augustine County, Texas, August Term, 1899.

STATE OF TEXAS
vs.
J. C. LEAGUE.

Now comes the plaintiff and by way of trial amendment says that the Exhibit "A" spoken of, and in which are the taxes, interest, penalties, and costs shown to be due in plaintiff's amended petition, *are* attached to the plaintiff's original petition, and it is prayed that the said exhibits be received as a part of plaintiff's amended petition.

JOHN THOMSON,
Co. Att'y for the State of Texas.

Filed September 9th, 1899.

W. J. GARRETT,
Dist. Clerk.

Final Judgment of Trial Court.

THE STATE OF TEXAS
vs.
J. C. LEAGUE. } No. 1559.

And now, on this the 9th day of September, A. D. 1899, this cause coming on regularly for trial, came the plaintiff, by its attorney, and the defendant also appeared in person and by attorney and announced ready for trial; whereupon came on to be heard the exceptions of the defendant to the plaintiff's petition, and exceptions Nos. 1, 2, 3, and 5 were sustained and the other exceptions overruled
27 and leave granted to plaintiff to amend; to which defendants excepts; and whereupon came on to be heard the exceptions of the defendant to the amended original answer, which were sustained, and *have* granted to file trial amendment, and, all exceptions being overruled, both parties announced ready for trial, and after hearing the pleadings and evidence and duly considering the same the court is of the opinion and finds that the said defendant is indebted to the plaintiff, The State of Texas, for the taxes due it for the year- 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, and 1896 in the sum of thirteen hundred and five and $\frac{87}{100}$ dollars, including tax and interest, and the further sum of $72.50, am't due the clerk, and ——, amount due printer, and $69.00, amount due collector, *dollars*, being the total amount due on separate parcels of land as hereinafter described. It is therefore ordered, adjudged, and decreed by the court that the plaintiff, The State of Texas, do have and recover of and from the defendant for

the taxes, interest, and costs due on *on* each of the following-described lots or parcels of land as follows:

1. Certificate 31*y*, abstract 260; total am't of the taxes, penalties, and interest due on said lands on the 6th of August, 1898, the sum of $83.64 for the taxes for the years 1884, '5, '6, '7, '8, and 1896.

2. Certificate 29*y*, abstract 261; total am't of the taxes, interest, and penalties and costs, $82.15, for the taxes *for the taxes* for the years 1884, '5, '6, '7, '8, and 1896.

3rd. Certificate No. 34*y*, abstract 262; total am't of taxes, interest, penalties, and costs for the years 1884, '5, '6, '7, '8, & 1896, $83.96.

4th. Certificate 24*y*, abst. No. 263; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $77.94.

5th. Certificate No. 28*y*, abst. No. 264; total amount of taxes, interest, and penalties and costs for the years 1884, 1885, 1886, 1887, 1888, 1894, and 1896, $99.14.

6th. Certificate No. 19*y*, abst. No. 265; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $88.67.

28 7th. Certificate No. 40*y*, abst. No. 267; total amount of taxes, interest, penalties, and costs for the years 188–, 1886, 1887, 1888, 1885, 1895, and 1896, $35.90.

8th. Certificate No. 20*y*, abst. No. 268; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $83.20.

9th. Certificate No. 33*y*, abst. No. 269; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $84.18.

10th. Certificate No. 35*y*, abst. No. 270; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $83.99.

11th. Certificate No. 36*y*, abst. No. 271; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, and 1896, $138.90.

12th. Certificate No. 27*y*, abst. No. 275; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $83.26.

13th. Certificate No. 30*y*, abst. No. 376; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887; and 1896, $71.68.

14. Certificate No. 32*y*, abst. No. 277; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $83.04.

15. Certificate No. 37*y*, abst. No. 278; total amount of taxes, interest, penalties, — for the years 1884, 1885, 1886, 1887, 1888, and 1896, $83.04.

15. Certificate No. 39*y*, abst. No. 279; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $82.29.

16. Certificate Nos. 38*y*, abst. Nos. 485; total amount of taxes, in-

terest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, 1889, 1894, 1895, $11.23.

17. Certificate No. 38*y*, abst. No. 486; total amount of taxes,
29 interest, penalties, and costs for the years 1884, 1885, and 1887, $27.89, with interest on each of said items of recovery from this the 9th day of September, 1899, until paid, at the rate of six per cent. per annum, together with all costs of suit, for which let execution issue.

And it is adjudged and decreed that a lien exists against each of said tracts or parcels of land for the amount of the taxes, interest, and costs herein adjudged to be due on the same, which lien is hereby foreclosed on each of said tracts of land; and it is further ordered, adjudged, and decreed that an order of sale be issued by the clerk of this court, directed to the sheriff or any constable of San Augustine county, Texas, commanding such officer to seize, levy upon, and advertise for sale, as under execution, each of said tracts of land and sell the same to the highest bidder for cash, as under execution, but if the defendant or his attorney shall, at any time before the sale, file with the sheriff or other officer in whose hands this order of sale shall be placed, a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of said subdivisions, then such officer shall sell the land in said subdivisions as the defendant may request, and in such case shall only sell as many subdivisions, as near as may be, to satisfy this judgment, interest, and costs, and after the payment of the judgment, interest, and cost of suit herein adjudged against it the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of this court, to be retained by him, subject to the order of the court, for the period of two years, after which time the court may order the same paid to the State treasurer, who shall hold the same is trust to be paid to the defendant in the manner prescribed by law.

It is further ordered by the court that the officer executing this order of sale shall make a deed to the purchaser or purchasers at such sale upon their complying with the terms thereof, such sale and deed thereunder to be made subject to the right of the defendant to redeem the land so sold within two years from the date of said sale upon paying to the purchaser double the amount of the money paid by said purchaser for said land, which condition shall be expressed in the deed to the purchaser.

30 And it is further ordered that the order of sale herein directed to be issued shall have the force and effect of a writ of possession as between the parties to this suit or any one claiming under the defendants or either of them by any right acquired, pending this suit, to place the purchaser in possession, and the officer executing this order of sale is directed by virtue thereof to place the purchaser or purchasers of such property at such sale in possession thereof within thirty days after such day of sale.

In the event said lands should not bring enough to pay the taxes, interest, penalties, and costs, then it is ordered that no further execution issue in said cause; to which judgment the defendant excepts

and in open court gives notice of an appeal to the court of civil appeals of the 1st supreme dist. of Texas. It is ordered that 10 days be given after the adjournment of this court in which to file a statement of facts.

Statement of Facts.

In the District Court of San Augustine County, Texas, 1899.

THE STATE OF TEXAS
vs.
J. C. LEAGUE. } No. 1559.

On the trial of the above styled and numbered cause it is agreed that the following pages comprise the facts proven on the trial of said cause on the 9th day of September, 1899, and all the facts:

1st. Plaintiff proved that the delinquent-tax record on file in the office of the county clerk and duly certified to had been duly and legally published, and that—

2nd. The publication of same was made more than twenty days before the filing of this suit, and—

3rd. Said delinquent-tax record showed with reference to the lands in controversy the following words and figures:

31 & 32

Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						Interest.		10 per cent. penalty.	Grand total.	Remarks.
								Ad valorem.	School.	Special.	Total State.	Ad valorem.	Total.	State.	County.			
1884	Blanch, M. S.	261	S. P. R. R. Co.	319	S. P. R. R. Co.	640	214	64	.....	.....	64	1 39	1 39	42	1 12	35	3 92	Sold to State, cost 15c.
1884	Turner, James	"	"	"	"	"	428	1 28	.....	.....	1 28	2 78	2 98	98	1 06	37	4 11	
1885	Blanch, M. S.	"	"	"	"	"	214	53	26	.....	79	1 39	2 18	52	1 06	37	3 96	
1885	Turner, James	"	"	"	"	"	214	53	26	.....	79	1 39	2 18	52	1 06	37	3 96	
1886	Unknown	"	"	"	"	"	428	1 07	53	1 60	2 60	2 78	4 38	1 04	2 12	74	7 70	
1886	Blanch, M. S.	"	"	"	"	"	426	1 06	53	1 59	2 59	2 77	4 36	1 04	2 12	73	7 65	
1887	"	"	"	"	"	"	214	53	26	80	1 59	1 39	2 98	52	1 06	37	4 11	
1887	Turner, James	"	"	"	"	"	214	53	26	40	1 19	1 39	2 58	52	1 06	37	3 96	
1888	Unknown	"	"	"	"	"	640	1 60	80	2 40	4 80	4 15	8 95	1 57	3 20	1 12	12 80	
1896	Unknown	"	"	"	"	"	640	2 56	1 30	3 86	6 72	4 15	10 87	1 57	3 20	1 12	16 14	
									2 31	4 87							15	
																	83 64	

	Owner.	Abstract number.	Original grantee.	Certificate number.	Patentee.	Quantity.	Acres sold of delinquent.	State and county taxes due.						Interest.			Grand total.	Remarks.
								Ad valorem.	School.	Special.	Total State.	Ad valorem.	Total.	State.	County.			
1884	M. S. Blanch	261	S. P. R. R. Co.	299	S. P. R. R. Co.	640	214	64	.....	.....	64	1 39	1 39	42	1 12	35	3 92	Sold to State, cost 15c.
1884	James Turner	"	"	"	"	"	428	1 28	.....	.....	1 28	2 78	2 98	98	1 06	37	4 11	
1885	M. S. Blanch	"	"	"	"	"	214	53	26	.....	79	1 39	2 18	52	1 06	37	3 96	
1885	J. Turner	"	"	"	"	"	214	53	26	.....	79	1 39	2 18	52	1 06	37	3 96	
1886	Unknown	"	"	"	"	"	428	1 07	53	1 60	2 60	2 78	4 38	1 04	2 12	74	7 70	
1886	M. S. Blanch	"	"	"	"	"	426	1 06	53	1 59	2 59	2 77	4 36	1 04	2 12	73	7 65	
1887	"	"	"	"	"	"	214	53	26	80	1 59	1 39	2 98	52	1 06	37	4 11	
1887	James Turner	"	"	"	"	"	214	53	26	40	1 19	1 39	2 58	52	1 06	37	3 96	
1888	Unknown	"	"	"	"	"	640	1 60	80	2 40	4 80	4 15	8 95	1 57	3 20	1 12	12 80	
1896	Unknown	"	"	"	"	"	640	2 56	1 30	3 86	6 72	4 15	10 87	1 57	3 20	1 12	16 14	
									2 31	4 87							15	
																	82 15	

33 & 34

Year delinquent or rendered.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						10 per cent. penalty.	Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State.	County.		
1884	J. Turner	262	S. P. R. R. Co	349	S. P. R. R. Co	640	428	1 28		1 28	2 78		2 78	75	1 07	2 33	8 21	Sold to State, cost 15c.
1884	M. S. Blatch	"	"	"	"	"	214	64		64	1 39		1 39	37	54	1 17	4 11	
1885	"	"	"	"	"	"	214	53		53	1 39		1 39	38	61	1 07	4 24	
1885	J. Turner	"	"	"	"	"	428	1 07		1 07	2 78		2 78	78	1 25	2 17	8 58	
1886	Unknown	"	"	"	"	"	426	1 06		1 06	2 77		2 77	77	1 14	2 09	8 24	
1886	M. S. Blatch	"	"	"	"	"	214	53		53	1 39		1 39	38	55	1 00	4 10	
1887	J. Turner	"	"	"	"	"	426	80		80	2 09		2 09	57	79	1 36	6 00	
1887	Unknown	"	"	"	"	"	214	40		40	1 39		1 39	38	58	1 00	4 10	
1888	Unknown	"	"	"	"	"	640	96	1 20	2 16	4 80		4 80	1 08	1 58	2 74	11 95	
1896	"	"	"	"	"	"	640	56	1 20	1 76	3 50	3 20	6 70	1 11	1 39	2 24	12 24	
	Total							21	21	42	1 12		1 54	1 46	1	1 60	16 14	
																	83 96	
1884	J. Turner	263	S. P. R. R. Co	249	S. P. R. R. Co	640	428	1 28		1 28	2 78		2 78	72			8 00	
1885	"	"	"	"	"	"	640	1 60	80	2 40	4 16		4 16	1 15			12 65	
1885	Unknown	"	"	"	"	"	640	1 60	80	2 40	4 16		4 16	1 10			12 22	
1887	J. Turner	"	"	"	"	"	640	1 60	1 20	3 60	6 24		6 24	1 82			17 82	
1887	Unknown	"	"	"	"	"	640	96	1 20	2 16	4 80		4 80	1 36			10 96	
1888	Unknown	"	"	"	"	"	640	56	1 20	1 76	3 50	3 20	6 70	1 46			16 16	
1896	Unknown	"	"	"	"	"	640	56	2 20	2 76	5 12	3 20	8 32					
	Total																87 94	

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Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						In per cent. penalty.	Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State.	County.		
1884	M. S. Blanch	264	S. P. R. R. Co	289	S. P. R. R. Co	640	214	64	.....	64	1 39	.....	1 39	37	53	1 17	4 10	Sold to State, 15c.
1884	J. Turner	"	" " "	"			428	1 28	.....	1 28	2 78	.....	2 78	74	1 07	2 33	8 20	
1885	M. S. Blanch	"	" " "	"			224	53	26	79	1 39	.....	1 39	38	61	1 07	4 17	
1885	J. Turner	"	" " "	"			428	1 07	53	1 60	2 78	.....	2 78	78	1 24	2 16	8 56	
1886	Unknown	"					426	1 07	53	1 60	2 77	.....	2 77	75	1 15	1 99	8 26	
1886	M. S. Blanch	"					214	53	26	79	1 39	.....	1 39	39	56	1 00	4 11	
1887	" "	"					214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner	"					426	1 60	80	2 40	4 15	.....	4 15	1 08	1 58	2 74	11 95	
1804	Unknown	"					580	1 85	1 54	3 39	4 00	3 05	7 05	1 40	81	1 91	15 46	
1888	"	"					640	96	1 20	2 16	4 80	.....	4 80	1 11	1 29	2 88	12 24	
1896	"	"					640	2 56	2 30	4 86	5 12	3 20	8 32	1 40	50	1 00	16 14	
																	15	
	Total																$99 19	
1884	M. S. Blanch	265	S. P. R. R. Co	290	S. P. R. R. Co	640	214	64	.....	64	1 39	.....	1 39	37	54	1 17	4 11	Sold to State, costs 15c.
1884	J. Turner	"	" " "	"	" " "	"	640	1 92	.....	1 92	4 16	.....	4 16	1 12	1 61	3 57	12 38	
1885	M. S. Blanch	"	" " "	"	" " "	"	214	53	26	79	1 39	.....	1 39	39	62	1 08	4 27	
1885	J. Turner	"	" " "	"		"	428	1 07	53	1 60	2 78	.....	2 78	76	1 09	2 17	8 40	
1886	Unknown	"					426	1 06	53	1 59	2 77	.....	2 77	75	1 14	1 99	8 24	
1886	M. S. Blanch						214	53	26	79	1 39	.....	1 39	39	58	1 00	4 13	
1887	" "						214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner						426	1 60	80	2 40	4 15	.....	4 15	1 08	1 58	2 74	11 95	
1888	Unknown						640	96	1 20	2 16	4 80	.....	4 80	1 11	1 29	2 88	12 24	
1896	Unknown						640	2 56	2 30	4 86	5 12	3 20	8 32	1 46	50	1 00	16 14	
																	15	
																	$88 01	

Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						10 per cent. penalty.	Interest.		Grand total.	
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State	County.		
1884	Cooper & Turner	267	S. P. R. R. Co.	409	S. P. R. R. Co.	320	320	96	.....	96	2 08	.....	2 08	56	80	1 75	6 15	Sold to State, 15c.
1885	Unknown	"	" " " "	"	.....	"	320	80	40	1 20	2 08	.....	2 08	56	86	1 49	6 19	
1886	Unknown	"	" " " "	"	.....	"	320	80	40	1 20	2 08	.....	2 08	54	79	1 37	5 98	
1887	Cooper & Turner	.....	.....	.....	.....	.....	320	32	40	72	1 60	.....	1 60	37	43	96	4 08	
1888	Unknown	.....	.....	.....	.....	.....	50	25	20	45	40	25	65	12	08	11	1 41	
1895	"	.....	.....	.....	.....	.....	320	80	40	1 20	2 08	.....	2 08	58	93	1 62	6 41	
1885	Cooper & Thomas	.....	.....	.....	.....	.....	320	88	79	1 67	1 76	1 10	2 86	50	20	30	5 53	
1896	Unknown	.....	.....	.....	.....	.....											15	
	Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$37 90	
1884	M. S. Blanch	268	S. P. R. R. Co.	209	S. P. R. R. Co.	640	214	64	.....	64	1 39	.....	1 39	35	42	1 12	3 92	Sold to State, costs 15c.
1884	J. Turner	"	.....	.....	" " " "	"	428	1 28	.....	1 28	2 78	.....	2 78	72	98	2 24	8 00	
1885	M. S. Blanch	.....	.....	.....	.....	.....	214	53	26	79	1 39	.....	1 39	37	52	1 04	4 11	
1885	J. Turner	.....	.....	.....	.....	.....	428	1 07	53	1 60	2 78	.....	2 78	76	1 17	2 08	8 39	
1886	Unknown	.....	.....	.....	.....	.....	426	1 07	53	1 60	2 77	.....	2 77	73	1 08	1 92	8 10	
1886	M. S. Blanch	.....	.....	.....	.....	.....	214	1 53	26	79	1 39	.....	1 39	39	48	96	4 37	
1887	J. Turner	.....	.....	.....	.....	.....	426	1 60	80	2 40	4 15	.....	4 15	1 07	1 54	2 64	11 80	
1887	M. S. Blanch	.....	.....	.....	.....	.....	214	80	40	1 20	2 09	.....	2 09	1 09	77	1 32	5 91	
1888	Unknown	.....	.....	.....	.....	.....	640	2 96	1 20	2 16	.....	.....	4 80	.....	1 20	2 80	12 05	
1896	"	.....	.....	.....	.....	.....	640	2 56	2 30	4 86	.....	.....	8 32	.....	58	98	16 40	
	Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	15	
																	$83 20	

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Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						10 per cent. penalty.	Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State.	County.		
1884	J. Turner	.....	S. P. R. R. Co	.....	S. P. R. R. Co	640	428	4 28	.....	1 28	2 78	.....	2 78	75	1 17	2 33	8 31	
1884	M. S. Blanche	.....	" " "	.....	" " "	"	214	64	.....	64	1 39	.....	1 39	37	54	1 17	4 11	
1885	" "	.....	" " "	.....	" " "	"	214	53	26	79	1 39	.....	1 39	38	61	1 08	4 25	
1885	J. Turner	.....	.....	.....	.....	"	428	1 07	53	1 60	2 78	.....	2 78	78	1 25	2 17	8 58	
1886	Unknown	.....	.....	.....	.....	.....	426	1 06	53	1 59	2 77	.....	2 77	75	1 14	1 96	8 24	
1886	M. S. Blanche	.....	.....	.....	.....	.....	214	53	26	79	1 39	.....	1 39	37	57	1 00	4 12	
1887	" "	.....	.....	.....	.....	.....	214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner	.....	.....	.....	.....	.....	426	1 60	80	2 40	4 15	.....	4 15	1 08	1 58	2 74	11 85	
1888	Unknown	.....	.....	.....	.....	.....	640	96	1 20	2 16	4 80	.....	4 80	1 11	1 29	2 88	12 24	
1896	"	.....	.....	.....	.....	.....	640	2 56	2 30	4 86	5 12	3 20	8 32	1 47	58	1 00	16 23	
																	15	
	Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$84 18	
1884	J. Turner	.....	S. P. R. R. Co	.....	S. P. R. R. Co	640	428	1 28	.....	1 28	2 78	.....	2 78	74	1 07	2 33	8 20	Sold to State, costs 15c.
1884	M. S. Blanche	.....	" " "	.....	.....	.....	214	64	.....	64	1 39	.....	1 39	37	54	1 17	4 11	
1885	M. S. Blanche	.....	" " "	.....	.....	.....	214	53	26	79	1 39	.....	1 39	38	61	1 07	4 24	
1885	J. Turner	.....	.....	.....	.....	.....	428	1 07	53	1 60	2 78	.....	2 78	78	1 25	2 17	8 58	
1886	Unknown	.....	.....	.....	.....	.....	426	1 07	53	1 60	2 77	.....	2 77	78	1 25	2 16	8 56	
1886	M. S. Blanche	.....	.....	.....	.....	.....	214	53	26	79	1 39	.....	1 39	36	56	1 00	3 95	
1887	" "	.....	.....	.....	.....	.....	214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 01	
1887	J. Turner	.....	.....	.....	.....	.....	426	1 60	80	2 40	4 15	.....	4 15	1 09	1 58	2 74	11 96	
1888	Unknown	.....	.....	.....	.....	.....	640	96	1 20	2 16	4 80	.....	4 80	1 11	1 29	2 88	12 24	
1896	"	.....	.....	.....	.....	.....	640	2 56	2 30	4 86	5 12	3 20	8 32	1 46	50	1 00	16 14	
																	15	
	Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	83 99	

Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						10 per cent. penalty.	Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State.	County.		
1884	J. Turner	271	S. P. R. R. Co.	36½	S. P. R. R. Co.	640	428	1 28	.....	1 28	2 78	.....	2 78	75	1 08	2 34	7 48	
1884	M. S. Blanch	"	" " " "	"	" " " "	"	214	64	.....	64	1 39	.....	1 39	37	54	1 17	3 74	
1885	" "	"	" " " "	"	" " " "	"	214	53	26	79	1 39	.....	1 39	39	62	1 08	3 88	
1885	J. Turner	.....	.....	.....	.....	.....	428	1 07	53	1 60	2 78	.....	2 78	78	1 25	2 17	7 80	
1886	Unknown	.....	.....	.....	.....	.....	426	1 06	53	1 59	2 77	.....	2 77	75	1 14	1 99	7 49	
1886	M. S. Blanch	.....	.....	.....	.....	.....	214	53	26	79	1 39	.....	1 39	37	57	1 00	3 75	
1887	" "	.....	.....	.....	.....	.....	214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner	.....	.....	.....	.....	.....	426	1 60	80	2 40	4 15	.....	4 15	1 09	1 58	2 74	11 96	
1888	Unknown	.....	.....	.....	.....	.....	640	96	1 20	2 16	4 80	.....	4 80	1 11	1 30	2 88	12 25	
1889	Unknown	.....	.....	.....	.....	.....	640	2 56	1 60	4 16	8 32	.....	8 32	1 92	2 25	4 40	22 14	
1890	Unknown	.....	.....	.....	.....	.....	640	2 56	2 57	4 16	8 32	.....	8 32	1 85	1 99	3 99	20 31	
1891	Unknown	.....	.....	.....	.....	.....	626¾	2 09	2 57	3 57	5 01	3 13	8 14	1 67	1 54	3 42	18 43	
1896	Unknown	.....	.....	.....	.....	.....	626¾	2 51	2 25	4 76	5 01	3 13	8 14	1 24	56	97	13 67	
	Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$138 92	
1884	M. S. Blanch	275	S. P. R. R. Co.	27½	S. P. R. R. Co.	640	214	64	.....	64	1 39	.....	1 39	35	42	1 12	3 92	Sold to State, 15c.
1884	J. Turner	"	.....	"	.....	.....	428	1 28	.....	1 28	2 78	.....	2 78	72	98	2 24	8 00	
1885	M. S. Blanch	"	.....	"	.....	.....	214	53	26	79	1 39	.....	1 39	38	65	1 04	4 35	
1885	J. Turner	"	.....	"	.....	.....	428	1 07	53	1 60	2 78	.....	2 78	77	1 17	2 08	8 40	
1886	Unknown	.....	.....	.....	.....	.....	426	1 07	53	1 60	2 77	.....	2 77	73	1 08	1 92	8 10	
1886	M. S. Blanch	.....	.....	.....	.....	.....	2 4	53	26	79	1 39	.....	1 39	36	48	96	3 98	
1887	" "	.....	.....	.....	.....	.....	214	80	40	1 20	2 09	.....	2 09	59	77	1 32	6 50	
1887	J. Turner	.....	.....	.....	.....	.....	426	1 60	80	2 40	4 15	.....	4 15	1 07	1 54	2 64	11 80	
1888	Unknown	.....	.....	.....	.....	.....	640	96	1 20	2 16	4 80	.....	4 80	1 09	1 20	2 80	12 05	
1896	Unknown	.....	.....	.....	.....	.....	640	2 56	2 30	4 86	5 12	3 20	8 32	1 47	58	98	16 21	
																	15	
																	$83 26	

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Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						10 per cent. penalty.	Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State.	County.		
1884	M. S. Blanche	276	S. P. R. R. Co.	32y	S. P. R. R. Co.	640	214	64	.....	64	1 39	.....	1 39	37	54	1 17	4 07	Sold to State, 15c.
1884	J. Turner	"					428	1 28	.....	1 28	2 78	.....	2 78	73	1 07	2 34	8 09	
1885	M. S. Blanche	"					214	53	26	79	1 39	.....	1 39	38	61	1 08	4 25	
1885	J. Turner	"					428	1 07	53	1 60	2 78	.....	2 78	78	1 25	2 17	8 58	
1886	Unknown	.....					426	1 06	53	1 59	2 78	.....	2 78	75	1 14	1 99	8 24	
1886	M. S. Blanche	.....					214	53	26	79	1 39	.....	1 39	37	57	1 00	4 12	
1887	" "	.....					214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner	.....					426	1 60	80	2 40	4 15	.....	4 15	1 08	1 58	2 74	11 95	
1896	Unknown	.....					640	2 56	2 30	4 86	5 12	3 20	8 32	1 47	58	1 00	16 23	
	Total	.....				.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$71 68	
1884	M. S. Blanche	277	S. P. R. R. Co.	32y	T. & P. R. R. Co.	640	214	64	.....	64	1 39	.....	1 39	37	54	1 17	4 07	Sold to State, 15c.
1884	James Turner	"				"	428	1 28	.....	1 28	2 78	.....	2 78	65	66	2 33	7 21	
1885	M. S. Blanche	.....				"	214	53	26	79	1 39	.....	1 39	38	61	1 08	4 25	
1885	J. Turner	.....				.....	428	1 07	53	1 60	2 78	.....	2 78	78	1 25	2 17	8 58	
1886	Unknown	.....				.....	426	1 07	53	1 60	2 77	.....	2 77	75	1 14	1 99	8 24	
1886	M. S. Blanche	.....				.....	214	53	26	79	1 39	.....	1 39	37	57	1 00	4 12	
1887	" "	.....				.....	214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner	.....				.....	426	1 60	80	2 40	4 15	.....	4 15	1 08	1 58	2 74	11 95	
1888	Unknown	.....				.....	640	96	1 20	2 16	4 80	.....	4 80	1 11	1 28	2 88	12 24	
1896	Unknown	.....				.....	640	2 56	2 30	4 86	5 12	3 20	8 32	1 47	58	1 00	16 23	
																	15	
	Total	.....				.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$83 [illegible]	

Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Certf. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.								Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.	In per cent. penalty.	State.	County.		
1884	J. Turner	5	S. P. R. R. Co.	359	S. P. R. R. Co.	640	426	1		1	1		1					1	Sold to State, 15c.
1884	M. S. Blanch	5	"	"	"	"	214	64		64	64		64					64	"
1885	"	5	"	"	"	"	214	64	25	89	64		64					64	"
1885	J. Turner	5	"	"	"	"	426	96	33	129	96		96					96	"
1886	Unknown	5	"	"	"	"	214	64	25	89	64		64					64	"
1886	M. S. Blanch	5	"	"	"	"	214	64	25	89	64		64					64	"
1887	"	5	"	"	"	"	214	64	25	89	64		64					64	"
1887	J. Turner	5	"	"	"	"	426	96	33	129	96		96					96	"
1888	Unknown	5	"	"	"	"	214	64	25	89	64		64					64	"
1886	"	5	"	"	"	"	640	96	33	129	96		96					96	"
	Total	5		359	S. P. R. R. Co.	640	426	1		1	1		1					1	Sold to State, 15c.
1884	J. Turner	5	S. P. R. R. Co.	359	S. P. R. R. Co.	640	426	1		1	1		1					1	"
1884	M. S. Blanche	5	"	"	"	"	214	64		64	64		64					64	"
1885	J. Turner	5	"	"	"	"	426	96	33	129	96		96					96	"
1885	M. S. Blanche	5	"	"	"	"	214	64	25	89	64		64					64	"
1886	Unknown	5	"	"	"	"	214	64	25	89	64		64					64	"
1886	M. S. Blanch	5	"	"	"	"	214	64	25	89	64		64					64	"
1887	"	5	"	"	"	"	214	64	25	89	64		64					64	"
1887	J. Turner	5	"	"	"	"	426	96	33	129	96		96					96	"
1888	Unknown	5	"	"	"	"	214	64	25	89	64		64					64	"
1886	"	5	"	"	"	"	640	96	33	129	96		96					96	"

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Year delinquent or returned.	Owner.	Abst. No.	original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.								Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.	10 per cent. penalty.	State.	County.		
1884	M. S. Bintcliffe	485	S. P. R. R. Co.	389	S. P. R. R. Co.	1142	1142½	34	05	34	74		74	09	02	03	1 00	
1885	" "						1142½	38	12	43	74		74	10	02	03	1 15	
1886	" "						1142½	38	14	42	69		69	09	02	03	1 05	
1887	" "						1142½	42	21	63	1 10		1 83	17	02	03	1 85	
1888	" "						1142½	46	29	75	1 46	31	2 52	25	02	03	2 82	
1894	" "						1142½	19	16	35	46	20	1 01	14	02	03	1 54	
1895	" "						1142½	26	23	49	44	25	1 18	12	02	03	1 35	
1896	" "						1142½	22	21	43	44	25	1 12	12	02	03	1 29	
	Total																	$11 23	
1884	J. Turner	483	S. P. R. R. Co.	389	S. P. R. R. Co.	4283	428	1 58	33	1 91	24		24	02	01	01	31	
1885	" "						428	1 67	33	1 1 00	24		24	02	01	01	1 8	
1887	" "						428	1 60	80	1 40	15		15	01	01	01	11	
	Total																	57 89	

49-52 I approve the above as a true and correct statement of the evidence had on the trial of the above-styled cause, tried at the September term of the district court for San Augustine Co., Texas. I have made the same, the parties having failed to agree on a statement of facts, this the 18th of September, 1899.

TOM C. DAVIS,
Judge Presiding.

Filed September 19th, 1899. W. J. Garrett, dist. clerk, by Sam. Garrett, deputy.

* * * * * * *

53 *Defendant's Assignment of Errors.*

No. 1.

In the District Court of San Augustine County, Texas.

THE STATE OF TEXAS
vs.
J. C. LEAGUE. } No. 1559

Defendant's assignments of errors.

1st assignment. The court erred in overruling defendant's general demurrer to plaintiff's amended original petition and trial amendment, said demurrer being based on the following propositions:

a. Sections 11, 13, 15, and 16 of art. 8 of the constitution of the State of Texas provides for the enforcement of delinquent taxes by an annual and summary levy by the collector of taxes, and the designation of this mode of collection operates as an exclusion of all other modes, and this suit or special proceedings for condemnation and sale under a decree of court is without authority of law.

b. Sec. 1, art. 2, of the constitution of Texas, dividing the powers of the government into three separate departments, viz., a legislative, an executive, and a judicial department, and said section prohibiting each department from exercising the powers attached to the other departments, and the collection of taxes being a function
54 of the executive branch of the government, the act of the legislature, by virtue whereof this suit is brought (chap. 5, art. 104, R. C. S.) is unconstitutional and void, in so far as it vests in the court power to collect delinquent taxes, and plaintiff's suit is therefore without authority of law.

c. The act of the legislature (chap. 5, title 104 R. C. S.) under which plaintiff's suit was brought, is retroactive and violates section 16 of the bill of rights of the constitution of the State of Texas, in so far as it enlarges and extends the lien for delinquent taxes and authorizes judgment against subsequent purchasers of lands charged with delinquent taxes assessed and due prior to the passage of said act.

d. The act of the legislature (chap. 5, title 104 R. C. S.) in so far as it ignores the legal effect and operation of sales of land for taxes

made prior to the passage of said act and in so far as it provides for the condemnation and resale of such land for the same taxes, for which said land had been previously sold, is void both as a retroactive law and as an attempt to deprive a citizen of his property without due process of law, in violation of section 16 bill of rights of the constitution of this State, and section 1, of the 14th amendment of the Constitution of the United States, and plaintiff's suit for the condemnation and resale of lands which have been previously sold to the State of Texas, and which had, as shown by plaintiff's petition, changed ownership before the passage of said act, is without authority of law.

e. Plaintiff's petition shows that the taxes sued for were assessed against certain of the tracts described therein, as the property of M. S. Blanche, on certain others of said tracts, as the property of Jas. Turner, against certain others, as the property of Cooper and Turner, and against others as the property of unknown *others*, but said petition failing to complain of said parties, or to pray for citation, or judgment against them, plaintiff has failed to bring before the court a proper defendant against whom, under the law, a judgment could be rendered.

2nd assignment. The court erred in overruling defend-
55 ant's third special demurrer, as reviewed and applied to plaintiff's amended original petition and holding thereby, that plaintiff was not required by law to show that the defendant sued as a subsequent purchaser — claimed the premises described in said petition under or in privity with the persons named as the owners of the premises therein described.

3rd assignment. The court erred in overruling defendant's fourth special demurrer and holding thereby that judgment for the taxes sued for could be entered against the defendant, who is alleged in said petition to be a subsequent purchaser of the premises on which the taxes were levied.

4th assignment. The court erred in overruling defendant's 8th special demurrer, and rendering in pursuance of said ruling judgment for the several amounts claimed as 10 % penalty on the taxes, and in holding thereby that the claim in said petition for 10 % penalty on taxes assessed and due prior to the passage of the act (chap. 5, title 5 R. C. S.) was authorized by law.

5th assignment. The court erred in overruling defendant's 9th special demurrer and giving judgment for the several amounts claimed as taxes for the year 1884, and holding thereby that said act (chap. 5, title 104 R. C. S.) authorizes suit for taxes assessed for the year 1884.

6th assignment. The court erred in overruling defendant's 10th special demurrer and in rendering in pursuance of said ruling judgment for the several amounts claimed in plaintiff's petition as interest on the taxes due for the years 1884 to 1896, inclusive, and in holding thereby that said act (chap. 5, title 104 R. C. S.) and the amendatory — passed by the 25th legislature is not unconstitutional and void in so far as it provides for a charge of 6 % interest on taxes which have been assessed and were due prior to the passage

of said act, or in holding that said charge of interest is authorized by some other law of this State.

7th assignment. The court erred in granting to plaintiff, notwithstanding defendant's objection thereto, leave to amend, when
56–61 plaintiff's petition showed that its cause of action was against certain persons who have not been made parties to this suit and that there was no suit pending in which a judgment could be rendered.

8th assignment. The court erred in adjudging against defendant the taxes, interest, penalties, and costs claimed in plaintiff's petition.

9th. The court erred in rendering judgment against defendant and decree foreclosing plaintiff's alleged lien to secure the taxes sued for without any evidence to show that defendant owned the land described in plaintiff's petition, or that he claimed said land under or in privity with the parties against whom said taxes were assessed.

10th assignment. The acts of the legislature (chap. 42, 24th Leg.) and chap. 103, 25th Legis., embodied in chap. 5, title 104 R. C. S., provide a system for the collection of delinquent taxes and relate to the raising of revenue, and said acts having first originated by bill introduced in the Senate, in contravention of section 33, art. 3 of the Constitution are void, and the court erred in overruling defendant's general demurrer and rendering judgment in this cause.

ROBT M. FRANKLIN,
Of Counsel for Defendant.

Filed November 16th, 1899.

W. J. GARRETT,
District Clerk, San Augustine County, Texas.

* * * * * * *

62 (PROCEEDINGS IN THE COURT OF CIVIL APPEALS.)

Opinion.

(Filed January 19, 1900.)

J. C. LEAGUE, Appellant, *vs.* THE STATE OF TEXAS, Appellee. } No. 2385. Appeal from San Augustine County.

This was a suit brought by the State of Texas against J. C. League for the recovery of the delinquent taxes upon certain land situated in San Augustine county. The suit was brought under chapter 103 of the General Laws of 1897, (p. 132) for the taxes assessed against the land for the years 1884 to 1888 inclusive and for the year 1896 and other years as to some of the tracts of land, and judgment was rendered in favor of the State for the aggregate amount of the taxes for all of said years together with a penalty of ten per cent. thereon, interest and costs. The delinquent list for San Augustine county was properly made up in accordance with the law and embraced the lands described in the judgment, and all necessary steps were taken as prescribed by the law in order to maintain the suit. The

delinquent-tax record showed that the taxes had been assessed as set out in the exhibit attached to the petition, which appears also in the statement of facts. It appeared that the surveys upon which the taxes were sought to be recovered had been assessed for certain years as the property of unknown owners and for other years as the property of certain individuals other than the defendant, all of which is particularly shown by the exhibit which is referred to as a part of this statement. None of the surveys were assessed as the property of the defendant, but from the year 1888 they were assessed as the property of unknown owners with one or two exceptions. The defendant became the owner of the lands in 1889 and was the owner thereof when the suit was brought. The several surveys were sold for the taxes of 1884 and were brought by the State. Appellant contends that it was not
63 proved that he was the owner of the land. It is true that it does not appear in the statement of facts that he was, but there was no motion for a new trial for the want of proof of such fact. It was in no way called to the attention of the court below, and the objection is urged here now for the first time. It was also an admitted fact on the trial of the case. The statute requires the pleadings of the defendant, except those of law, to be verified by the affidavit of the defendant, his agent or attorney. The answer of the defendant verified by the affidavit of his attorney of record shows that he claims to own the lands by purchase since about the year 1889. While it is true that a general denial was pleaded by the defendant the purpose of the statute in requiring the pleadings to be sworn to is to have the true issues in the case presented, and the admission of the defendant in his sworn answer that he is the owner of the land obviated the necessity of proving that fact. Computed separately the several sums adjudged as taxes, interest, penalties and costs separating the year 1884 from all the other years which are stated in the aggregate, are as follows:

Taxes for the year 1884	$97.50
Interest on 1884 taxes	74.31
Penalty on 1884 taxes	17.07
Taxes from 1885 to 1896, inclusive	723.93
Interest on taxes 1885 to 1896, inclusive	365.23
Penalty on taxes 1885 to 1896, inclusive	103.50
Cost of sale	2.50
Clerk's fees and printer's costs	72.50
Collector's fees	69.00
Total judgment, exclusive of court costs	$1,525.60

The district court had jurisdiction of the suit for the foreclosure of the lien for the delinquent taxes on the land described in the petition. The suit was brought in strict compliance with the statute and unless the statute is in contravention of the constitution jurisdiction was properly exercised. By the constitution of 1869
64 a sale of land for taxes was prohibited except by a decree of some court of competent jurisdiction. Const. 1869, art. 12, sec. 21. It is contended that because the constitution of 1876 drops

this restriction of the constitution of 1869 and directs provision by the first legislature for the speedy sale of a sufficient portion of all lands and other property for the taxes due thereon and every year thereafter for the sale of all lands and other property upon which the taxes have not been paid, the sale of property for taxes is prohibited, except by a summary sale by the collector. Const. 1876, art. 8, sections 11, 13, 15 and 16, as well as art. 2, section 1 are cited in support of the contention, it being claimed that a sale of land for taxes by a decree of court is an interference with the executive department of the State government. In further support of this construction of the constitution the various tax laws passed since its adoption are referred to providing for the summary seizure and sale of property for delinquent taxes as a legislative construction of the constitution. But the direction to the legislature to make provision for a speedy sale does not restrict the manner of sale, but rather leaves that to the discretion of the legislature. The constitution certainly does not either in terms or by implication prohibit legislation providing for the foreclosure of the lien for taxes in the courts and a sale thereof by judicial decree. The legislature clearly had the power to provide such manner for the collection of taxes. Legislation under the constitution of 1869 providing for summary seizure and sale was held unconstitutional because such sales were prohibited. There is no prohibition against judicial sales in the constitution of 1876.

Taxes are made a lien upon the property against which they are assessed and the property, not the owner of it at the time the taxes are laid, is liable for the payment thereof, although the law may provide for the personal liability of the owner. The act of the legislature under which this suit is brought does not authorize a personal judgment against the owner for the taxes due upon the land. So the provision that the "proper persons shall be made parties defendant in such suits and shall be served with process, and
65 other proceedings had therein as provided by law for suits of like character in the district courts of this State," is fully met with respect to parties by making the present owner of the land the sole defendant to a suit for the foreclosure of the lien for taxes, and the law does not contemplate a foreclosure against every person who may have been connected with the title at any time during the period covered by the delinquent taxes. It is clear from a reading of the act that only the owner or person claiming the land at the time the suit is brought should be a party defendant.

The land upon which the foreclosure is sought had previously been sold to the State for the taxes assessed against it for the year 1884. While section 3 of the act requires a list made of all land sold for taxes since January 1, 1885, other sections of the act show that collection is only to be made of taxes due or assessed after January 1, 1885. But although a sale of the land for the taxes of 1884 had been made, it had not become absolute. The law under which the sale was made allowed the owner two years in which to redeem it by paying double the amount of the taxes, penalties and costs. Sayle's R. S. (1879) arts. 4759, 4758. Subsequent acts of several

legislatures were passed extending the time for redemption. By section 13 of the act now under consideration any delinquent taxpayer or any one having an interest in the land sold for taxes is allowed to redeem the same by paying to the collector all taxes due thereon since January 1, 1885, with interest at the rate of six per cent. per annum and all costs and a penalty of ten per cent. upon the taxes, the penalty however being in force only upon taxes accruing subsequent to the passage of the act. In providing for the collection of the taxes by suit and foreclosure the State waived as it might do the forfeiture of the land by sale and demanded only the taxes to be assessed thereon for the years subsequent to the sale and interest and costs. It could assert its lien for the taxes of subsequent years. Masterson *vs.* State, 42 S. W. 1003; Conklin *vs.* El Paso, 44 S. W., 883; Traylor *vs.* State, 46 S. W. 81; Clarke *vs.* Strickland, 5 Fed. Cases, 984 (8. C. 2 Curt. 439); Hodgden *vs.* Burleigh, 4 Fed. Rep. 111.

In Masterson *vs.* State, *supra*, decided by the court of civil appeals for the fourth district and in which a writ of error was refused
66 by the Supreme Court, it was held that although a sale of the land had been previously made, the lien continued to exist and might be foreclosed. That suit seems to have been for the taxes for which the land had been sold, and not as in this case for subsequent taxes. So also the case of Traylor *vs.* State, *supra*. But the sale in the first place was not an absolute sale and it has always been the policy of the State to extend the time for redemption of lands, and never to acquire them for itself. It had the right to waive the forfeiture which would become absolute by the lapse of time and permit a redemption upon condition that the owner would pay all taxes for the years subsequent, and it had the right to enforce this condition by a suit for foreclosure, no personal judgment being authorized against the owner. For the same reason the State in waiving its claim of forfeiture might impose as a condition of redemption the payment of legal interest on the taxes assessed against the land although there was no law in force at the time the taxes were laid providing for the collection of interest thereon. The lands were forfeited to the State by the sale for the taxes of 1884, the forfeiture to become absolute in two years. The offer of the State is to waive this forfeiture and restore the land to the owner if he will only pay the taxes accruing since then and six per cent. interest thereon together with the costs which had been incurred in making the sale and in making up the delinquent lists and of the suit. The State has waived its right of forfeiture on condition that the taxes with interest and costs shall be enforced against the land. This it might do. Conklin *vs.* El Paso, *supra*.

As above stated the law did not authorize the collection in this suit of the penalty prescribed in section 10 of the act; nor did it authorize a recovery for the taxes of 1884. While the judgment recites the State shall recover of the defendant the amount adjudged it provides that there shall be no personal execution against him. The judgment of the court below will be reformed so as to omit the taxes for 1884 and all penalties and to show no personal recovery

against the defendant for the amount of the taxes, interest and costs adjudged to be due and thus reformed will be affirmed. Reformed and affirmed.

C. C. GARRETT,
Chief Justice.

67 (Endorsed:) No. 2385. In court of civil appeals, Galveston. J. C. League, appellant, *vs.* The State of Texas, appellee. Opinion. Filed in court of civil appeals at Galveston Jan. 19, 1900. H. M. Knight, clerk. With app. No. 2611. Filed in supreme court Ap'l 4, 1900. Chas. S. Morse, clerk.

Judgment of the Court of Civil Appeals.

January 18, 1900.

J. C. League, Appellant,
vs.
The State of Texas, Appellee.
} No. 2385. From San Augustine County.

This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this court that there was error in the judgment of the court below in so far as it adjudged against the defendant a penalty of ten per cent. upon the taxes assessed against the lands described in the judgment and in allowing the plaintiff to recover for the taxes of 1884, it is therefore ordered that the judgment of the court below be reformed so as to omit said amounts, and it further appearing that, omitting said amounts, there is due the State of Texas the sum of twelve hundred and thirty-two and $\frac{77}{100}$ dollars for the taxes, interest and costs with interest thereon at 6 per cent. per annum from September 9th, 1899, upon the lands described in the petition, as follows, to wit:

1. Certificate 31*y*, abstract 260; total amount of the taxes, interest, and cost due on said lands on the 6th day of August, 1898, the sum of $69.47 for the taxes for the years 1885, '6, '7, and 1896.

2. Certificate 29*y*, abstract 261; total amount of taxes, interest, and costs, $65.26, for the taxes for the years 1885, '6, '7, '8, and 1896.

3. Certificate 34*y*, abstract 262; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.17.

4. Certificate 24*y*, abstract 263; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.63.

68 5. Certificate No. 28*y*, abstract 264; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $79.08.

6. Certificate 19*y*, abstract 265; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.22.

7. Certificate 40*y*, abstract 267; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, 1895, and 1896, $25.08.

8. Certificate 20*y*, abstract 268; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $66.87.

9. Certificate 33*y*, abstract 269; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.28.

10. Certificate 35*y*, abstract 270; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.64.

11. Certificate 36*y*, abstract 271; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, 1890, '1, and '6, $115.97.

12. Certificate 27*y*, abstract 275; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.88.

13. Certificate 30*y*, abstract 276; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $54.00.

14. Certificate 32*y*, abstract 277; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.28.

15. Certificate 37*y*, abstract 278; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.28.

16. Certificate 39*y*, abstract 279; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.59.

17. Certificate 38*y*, abstract 485; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, '9, 1894, & '5, $8.25.

18. Certificate 38*y*, abstract 486; total amount of taxes, interest, and costs for the years 1885 and 1887, $18.82.

And it is ordered, adjudged and decreed that a lien exists, in favor of the State of Texas, against each of said tracts above described for the amount of taxes, interests and costs adjudged to be due on them respectively, which lien is hereby foreclosed of each of said tracts of land.

69 It is further adjudged that a lien exists against all of said tracts of land collectively for the sum of one hundred and forty-four dollars, for printer's fees and costs due clerk and collector, which amount is included in the sum of twelve hundred and thirty-two & $\frac{77}{100}$ dollars heretofore adjudged in favor of the State of Texas, herein, which lien is hereby foreclosed on all of said tracts of land.

And it is further ordered that the clerk of the district court of San Augustine county do issue an order of sale directed to the sheriff or any constable of said county commanding him to seize and sell said land as if under execution, each tract separately for the sum set out against them respectively as above described with interest, and all of said tracts jointly for the sum adjudged them as costs with interest, but if defendant or his attorney shall at any time before the sale file with the officer selling the same, a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivisions, then such officer shall sell the land in said subdivisions as the defendant may request, and in such case shall only sell as many subdivisions as near as may be to satisfy this judgment, interest and all costs; and after the payment of this judgment, interest and the costs, as fixed by the court below, due to the clerk, collector and printer aggregating the sum of one hundred and forty-four dollars, and all costs of this suit in the court below, the remainder of the purchase price, if any, to be paid by said officer to the clerk of said district court to be retained by him subject to the order of the district court of said county for the period of two years, after which time the said

court may order the same paid to the State treasurer, who shall hold the same in trust to be paid to the defendant in the manner prescribed by law.

It is further ordered that the officer executing said order of sale shall make deed or deeds to the purchaser or purchasers at such sale upon their complying with the terms thereof; such sale and deed thereunder to be made subject to the right of defendant to redeem the land so sold within two years from the date of said sale,
70-88 upon paying to the purchaser, double the amount of the money paid by said purchaser for said land, which condition shall be expressed in the deed to the purchaser.

It is further ordered that the order of sale herein directed to be issued, shall have the force and effect of a writ of possession as between the parties to this suit, or any one claiming under the defendants, or either of them, by any right acquired pending this suit, to place the purchaser or purchasers in possession; and the officer executing said order of sale, is directed by virtue thereof to place the purchaser or purchasers of such property at such sale in possession thereof within thirty days after such day of sale.

In the event said lands should not sell for enough to pay this judgment interest and costs, then it is ordered that no further execution issue in said cause from said district court.

It is further ordered and adjudged that the State of Texas pay all costs of this appeal, and this decision be certified below for observance.

89 * * * * * * *

Opinion of Court of Civil Appeals on Motion for Rehearing.

(Filed March 8, 1900.)

J. C. LEAGUE, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } Motion No. 1740. On Motion for Rehearing.

In the case of City of Henrietta *vs.* Eustis, 87 Texas, 14, the supreme court held that the legislature had the power under the present constitution to authorize the collection of taxes by a suit in the district court and foreclosure of the lien therefor.

Appellant for the first time in his amended motion for a rehearing complains of the judgment of the court below, because it directs that the order of sale shall have the force of a writ of possession to put the purchaser in possession of the land within thirty days after date of sale. It was held in Masterson *vs.* State, 17 Texas Civ. App. 91, that it was error to award the writ, the law allowing the defendant two years in which to redeem the land. The judgment of the lower court will therefore be further reformed so as to stay the writ of possession for two years and until the further order of the court below. In all other respects the motion for rehearing will be overruled.

C. C. GARRETT,
Chief Justice.

90 (Endorsed:) No. 1740. In court of civil appeals, Galveston. J. C. League, appellant, *vs.* The State of Texas, appellee. Opinion on motion for rehearing. Filed in court of civil appeals, at Galveston, Mar. 8, 1900. H. M. Knight, clerk. With app. No. 2611. Filed in supreme court of Texas Ap'l 4, 1900. Chas. S. Morse, clerk.

Order of Court of Civil Appeals Entered on Motion for Rehearing.

(March 8, 1900.)

J. C. LEAGUE, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } No. 1740, 2385. From San Augustine County.

On this day came on to be heard appellant's motion for a rehearing of this cause, and the same having been duly considered, it is ordered that the judgment of the court below be further reformed so as to stay the writ of possession for two years, and until the further order of the court below. In all other respects said motion is overruled; that the appellant, J. C. League, and his sureties, J. P. Alvey and J. R. Coryell, pay all costs of this motion.

* * * * * * *

91 (PROCEEDINGS IN THE SUPREME COURT.)

Petition for Writ of Error.

In the Supreme Court of the State of Texas.

J. C. LEAGUE, Appellant,
vs.
THE STATE OF TEXAS, Appellee.

Petition for writ of error to the court of civil appeals for the first supreme judicial district of Texas, at Galveston.

92 To the honorable supreme court of Texas:

Your petitioner J. C. League complaining of the State of Texas, respectfully submits to this honorable court his petition for a writ of error in cause No. 2385, styled J. C. League appellant *vs.* The State of Texas, appellee and pending in the honorable court of civil appeals for the first supreme judicial district of Texas, at Galveston, and respectfully shows that petitioner, the appellant in said cause, resides in the city of Galveston, that The State of Texas is appellee, and the Honorable Thomas S. Smith, attorney general of the State of Texas, and Mr. D. E. Simmons, his assistant, both reside in the city of Austin, Texas, and they, together with Mr. John Thomson, of San Augustine, Texas, are counsel of record for appellee.

Petitioner shows that this suit was brought in the district court of San Augustine county by The State of Texas, plaintiff, against J. C. League, defendant, and is known and styled on the docket of said

court as No. 1559, The State of Texas *vs.* J. C. League, and said suit was instituted under and by virtue of the provisions of chapter 103, General Laws of 1897, to recover State and county taxes alleged to have been assessed and due on eighteen tracts of land in San Augustine county, known as Southern Pacific Railway surveys, for the years from 1884 to 1896 inclusive, and to recover also six per cent. interest and ten per cent. penalty on said taxes, together with the cost of making and publishing the delinquent-tax records, etc., and costs of suit; and also for the establishment and foreclosure of an alleged lien for said taxes, interest, penalty, costs of making and publishing delinquent-tax record and costs of suit; and on the 9th day of September 1899 the district court of San Augustine county, on the hearing of said cause, rendered judgment in favor of the State of Texas, and against petitioner herein for said taxes, interest, penalties and cost of making and publishing delinquent-tax record, for the sum of $1,525.60 together with six per cent. per annum interest on said amount and costs of suit and sale,—said sum of $1,525.60 comprising the taxes, interest, 10 % penalty, costs of sale for taxes of 1884, printer's
93 costs, county clerk's and collector's fees, which several items computed separately are as follows:

Taxes for the year 1884	$97.56
Interest on 1884 taxes	74.31
Penalty on 1884 taxes	17.07
Taxes from 1885 to 1896 inclusive	723.93
Interest on taxes 1885 to 1896 inclusive	365.23
Penalty on taxes 1885 to 1896 inclusive	103.50
Costs of sale for tax of 1884	2.50
Clerk's fees and printer's costs	72.50
Collector's fees	69.00
Total judgment exclusive of court costs	$1,525.60

And said judgment established and foreclosed a lien on each of said tracts of land for the amount of taxes, interest and costs adjudged against each tract respectively and directed an order of sale commanding the officer to sell said land as under execution and to place the purchasers in possession within thirty days after the sale, providing also that no execution ever should issue against the defendant in case the lands did not bring the sums sufficient to satisfy the judgment.

Petitioner further shows that he perfected his appeal to the court of civil appeals of first supreme judicial district and said court on the 18th day of January 1900, holding that the law did not authorize the enforcement of either the ten per cent. penalty or the taxes for the year 1884, and that the law did not authorize a personal judgment against the defendant reformed said judgment in said particulars and rendered judgment *in rem*, severally, against each of said tracts of land for its respective amount of the taxes, interest and cost and jointly against all of said tracts for the sum of $144.00—printer's and clerk's and collector's fees—said judgment being for the aggregate sum of $1,232.77; and said judgment also

established and foreclosed a lien against each tract for its respective amount of the taxes, interest and costs adjudged against such tract, and a lien collectively against all of said tracts for said sum of $144.00 printer's, clerk's and collector's fees, and directed sale as under execution, first of each tract to satisfy the taxes, interest and costs adjudged against the same, and thereafter, the sale of all tracts collectively to satisfy said sums of $144.00; also requiring the officer making the sales to place the purchaser in possession within thirty days after sale.

94 As thus reformed, the judgment of the district court was affirmed by the court of civil appeals. And, on the first day of February 1900, petitioner filed his motion for a rehearing in said cause, and on the 8th day of March 1900 said court handed down a supplemental opinion further reforming said judgment, and directing that the writ of possession should not issue thereunder for a period of two years from date of sale and until further orders of the district court, and in all other respects overruling said motion.

Petitioner further shows, as grounds for this application for writ of error, that the honorable court of civil appeals, in its opinion, conclusions and judgment, has erred on points of law involved in this case, and duly raised in the trial court, and in the appellate court, and duly presented in petitioner's motion for a rehearing, in the following particulars, to wit:

First suggestion of error.—The court of civil appeals has fallen into error, it is submitted, in holding that the act (chapter 103, Gen'l Laws 1897) under which this suit is brought, does not authorize a personal judgment against the owner for the taxes due upon the land, and in reforming the judgment of the trial court, in pursuance of such ruling, and rendering judgment *in rem*, and refusing to remand the case so that the delinquent owner could be brought into court and judgment for the taxes rendered against such delinquent.

Argument.

Plaintiff's petition and exhibit (Tr. R., 9–27) alleged that the taxes were charged on the delinquent-tax record against James Turner M. S. Blanch, Cooper and Turner and against unknown owners, and defendant's answer under oath showed that he acquired the lands against which the taxes were charged about the year 1889, after all the taxes, except those for the year 1896, had accrued, and the petition and exhibit did not show any taxes charged against defendant on the delinquent-tax record. Your petitioner suggests error in the ruling of the court above referred to,—first,—because the constitution of this State makes the ad valorem taxes on land a

95 personal charge against the owner, to be fixed only by an assessment and the lien which under the constitution must also be fixed by the assessment, is necessarily, an incident to the debt, and the purpose and effect of the tax sale under this constitution, is to pass the title of the delinquent owner, and the legislature cannot, in conformity with the law of this State pass the title in a judicial proceeding in which the owner against whom the taxes

were assessed is not a party, and is not bound. Second, because a careful examination of the various provisions of this act will show, that both in letter and in spirit, the act provides for the institution of a personal suit against the delinquent owner to establish the assessment and to foreclose the lien primarily against the owner charged on the roll, and also against such parties as the State's attorney shall see proper to bring into the case as subsequent purchasers or incumbrancers or claimants. And section 15 prescribes process by publication in cases where the land is assessed to unknown owners which process is the foundation of the suit and indispensable to the exercise of jurisdiction by the court under this act.

It is not contended that the legislature could not, in the absence of any constitutional restriction or limitation as to the nature of the lien for taxes, fix such lien by the levy of the tax, and provide for its enforcement by a proceeding *in rem*, which would bind all parties interested in the land, when the process usual in such cases had been duly executed and the proceedings had been regular in all other respects; but the constitutional limitations in this State preclude any such arbitrary exercise of the taxing power.

While such an extraordinary exercise of the sovereignty of the State is not, it would seem, supported on the ground of necessity as in the case of maritime liens, it has, nevertheless, been recognized and sustained in some States of the Union. Cooley on Taxation, page 527; Blackwell on Tax Titles (3rd ed.) 547. The last-named author discusses in a clear and succinct manner (page 547 *et seq.*) the effect of a tax sale where the land alone is charged and the effect of such sale where the tax is made a personal charge and the tax and lien fixed by assessment, as follows: "In those States where the tax is a charge upon the land alone, where no resort in
96 any event, is contemplated against the owner or his personal estate, and where the proceeding is strictly *in rem*, the tax deed will undoubtedly have the effect to destroy all prior interest in the estate, whether vested or contingent, executed or executory, and those in possession, reversion and remainder. In such case the tax law itself is notice to the whole world of the liability of the land for all public assessment, and every one claiming an interest in the land is bound at his peril, to pay the tax and thus protect that interest from forfeiture or sale. If he neglects his duty in this respect, his title becomes extinct, and a new and independent title becomes vested in the purchaser, freed from all prior liens, incumbrances upon the former estate, and indeed of every interest carved out of the old fee. The fee of the land passes, and not the interest simply of the former owner. All that can be required of the purchaser in such cases, is to show title out of the State, prove the regularity of the proceedings and introduce his deed, and he makes out a complete and perfect title to the fee.

On the other hand, where the law requires the land to be listed in the name of the owner of the fee or of any other interest in the estate,—provides for a personal demand of the tax,—and in case of default authorizes the seizure of the body or goods of the delinquent,

in satisfaction of the tax,—and in terms, or upon a fair construction of the law, permits a sale of the land only when all other remedies have been exhausted,—then the sale and conveyance by the officer passes only the interest of him in whose name it was listed,—upon whom the demand was made,—who had notice of the proceeding, and who alone can be regarded as legally delinquent. In such cases the title is a derivative one, and the tax purchaser can recover, in ejectment, only such interest as he may prove to have been vested in the defaulter at the time of the assessment. Any other construction of laws containing such provision, would be in violation of the spirit which moved the legislature to enact them, and be a means of depriving innocent persons of their estate, persons who had no notice of the proceedings and who in consequence of this omission, can in no sense be delinquent."

97 The case of Yenda *vs.* Wheeler, 9th Texas 408, cited in support of the above-quoted text, is directly in point, holding that under the system of taxation, then in vogue in Texas, the tax was a personal charge against the owner to whom it was assessed and the tax sale and deed thereunder could only pass the title of the delinquent owner. And as the system of taxation now in force is the same as in the year 1852 when this decision was rendered, this case is still authority as to the effect of a tax sale under the constitution and laws of this State. The constitution of 1845 did not make the tax a lien, but it required an assessment, (sec. 27 art. 7) and the act of March 20th 1848 (art. 3128, Hartley's Digest) fixed the personal liability of the owner of the land and provided for fixing the lien by assessment substantially in the same manner prescribed by sections 11 and 15 of the constitution now in force, and we submit, that the provisions of the constitution making the tax a personal charge, to be enforced by levy upon any property belonging to the delinquent, fixing the lien by assessment, requiring notice to the owner and giving the owner the right of redemption, all show that the object and purpose of the laws of Texas, regulating sales for taxes, is to pass by the sale the derivative title of the owner against whom the taxes were assessed, and this is true, whether the land is rendered for assessment by the owner or is assessed to unknown owners; in both instances, the process to subject the property to sale by the collector or to the jurisdiction of the court where suit is brought, must under the constitution and tax laws of this State, be process *in personam*, in the nature of a citation personally served or duly published in order to bring the delinquent owner whether known or unknown before the court.

The text above quoted from Blackwell on Tax Titles clearly defines and differentiates the two methods of passing title to land by tax sales known to the jurisprudence of this country. That is, first by a proceeding *in rem* by which all parties in interest are bound and the title passed by the sale is absolute against the world. Second,—by a proceeding *in personam*, by which the property is affected and bound only through the person, and the title passed is

98 derivative, depending for its validity upon the title of the person in whose name the property is assessed and sold.

Yanda *vs.* Wheeler (*supra*), Clegg *vs.* State, 42nd Texas 605, Meredith *vs.* Coker, 65th Texas, 31; and all other cases in which tax titles under the laws of Texas have been asserted or discussed in the courts of this State show that the title passed by tax sales in this State is derivative and cannot be otherwise under the constitution of this State,—and if derivative, then the court must have jurisdiction over the person whose title is to be passed by the judgment.

Possibly in this case, a better title than that of the persons assessed as the owners, may be passed by the sale under the judgment rendered herein, as it is a fact (although not disclosed by the record) that the defendant acquired these lands by title adverse to that of the alleged owner, but, in the next case that comes up, the attorney for the State may be mistaken as to the true owner and by securing judgment by default or otherwise against a party without title fail to enforce the assessment against the real owners. Certainly the law does not authorize the State's attorney to "swap horses in the middle of the stream" and the precedent of abandoning the delinquent-tax record in a hunt for the present owner of the land charged with the taxes may, if adhered to, result in serious loss and inconvenience to the State. It is clear, we submit, that the design of the law is, that the rights of the State shall be fixed by the assessment, that claimants may be brought into court and estopped by the judgment; but that, at all events, the person who is charged with the tax by the assessment shall be brought before the court by the prescribed process and bound by the judgment,—and any attempt in this State under the restrictions of our constitution, to resort to a proceeding *in rem* for the enforcement of taxes is beyond the realm of due process.

But, admitting for the purpose of this argument, that the legislature could, under our constitution, authorize a proceeding *in rem* for the condemnation and sale of land for taxes, such proceeding must be in "*strictissimi juris*", and the trial court could not, where the assessment is against non-residents or unknown owners,
99 exercise jurisdiction, until the process by publication prescribed by section 15 of the act of 1897, had been duly executed. Cooley on Tax., 528 *et seq.*; Mayo *vs.* Ah Loy, 32nd Cali. 477; Meredith *vs.* Coker, 65th Texas 31.

Second suggestion of error.—The trial court erred in holding that the act (chap. 103, Gen'l Laws 25th Legislature) does not require this suit for taxes to be brought against the delinquent against whom the taxes were assessed, and the court of appeals erred in affirming this judgment and refusing to remand the case so that necessary parties could be made.

Argument.

Section three of said act prescribes the manner in which the delinquent-tax records shall be made out. Sections 4 and 5 provide for its examination and correction by the commissioners' court, and for its publication; and by section 6, this delinquent-tax list is made the basis of the suits to be instituted against the delinquent, and this section, after prescribing the requisites of the petitions to be filed

in the suits brought by virtue of said delinquent-tax list or record, provides that said petition "shall pray for judgment for the payment of the several amounts specified therein, and in default thereof, that said land be sold to satisfy said judgment, etc." These provisions show clearly, we submit, that the design and intention of this act was not merely to prescribe a proceeding for the condemnation and sale of the land for the taxes due thereon, but to authorize a suit under the general jurisdiction of the district court whereby all parties liable for the tax, or in any way interested in the land, should be brought before the court and, by its judgment, forever estopped from questioning the title to be passed by the sale under decree of the court. This is, we believe, an unusual method of enforcing the collection of taxes, possibly violating art. 2 of the State constitution, and certainly evading all the safeguards of the law by which the citizen is protected from the arbitrary or unauthorized acts of courts of limited jurisdiction in summary proceedings if the State can invoke the general powers and jurisdiction of the district court and clothe the tax sale made under its decree, with all the presumptions which are indulged in support of the judgment of a court of general jurisdiction, while at the same time, the court refuses to apply in this suit the general principles which obtain in courts of general jurisdiction as to the making of parties and adjusting rights legal and equitable between the proper and necessary parties. In Meredith *vs.* Coker, 65th Texas 31, our supreme court says: "The legislature cannot confiscate property by the sanctification of a tax deed." Neither can it, we submit, confiscate this defendant's property involved in this case by the sanctification of a suit for taxes in a court of general jurisdiction where he is not permitted to invoke the general powers and jurisdiction of the court in defending himself against the consequences of a delinquency for which he is not responsible and the enforcement of a debt for which he is not personally liable. In the case at bar the taxes were not assessed against the defendant. He is before the court solely by the exercise of the general jurisdiction of the court invoked by making him the sole party to this suit and alleging that he has become the purchaser of the property charged with the lien for taxes, and by the law of the land he has the right when sued, to demand by plea in abatement, or by demurrer, when the petition itself shows the defect of parties, that all parties necessary in the final determination of the suit and adjustment of his rights and equities shall be brought under jurisdiction of the court. The claim of the State is a personal claim against the delinquent owner who had failed to pay his taxes. It depends on the validity of the assessment against him (Clegg *vs.* State, *supra*). The defenses to be made pertain to the delinquent, the evidence of payment, if any, is in his knowledge or possession. The object of the sale is to pass his title. Under the law of the land this title may be passed by a sale and deed by the collector of taxes, based upon a legal levy and valid assessment; but to bind the owner and pass his title by suit, due process of law demands that he be brought before the court, and in no other way can he be estopped by its judgment. The officer

under this act is required to buy in the property for the State if there are no bidders. Is it likely, we respectfully ask, that there would be any bidders under a judgment and
101 sale which does not estop the person who, by the assessment is conceded to be the owner of the property. Our courts have always zealously guarded by their decisions, the validity and efficiency of execution sales. They have held that the description of the land in the judgment, and in the notice of sale must be sufficient, without resort to extraneous evidence, to enable the bidders at the sale to identify the land, that every safeguard prescribed by the law for the purpose of preventing a *sacrifice of property sold under* execution, must be strictly observed. But in this case the court itself is casting a cloud on the title by refusing to bring into the suit the delinquent who, as shown by the petition herein, claimed the land when assessed, and whose claim has never been divested and will not be divested by the sale in this suit if the judgment stands as now rendered.

Third suggestion of error.—The trial court erred in holding that the following enumerated provisions of chapter 103, Gen'l Laws 1897, are not retroactive and void, to wit.

a. The provisions of section No. 6 of said act, in so far as it authorizes the entry of judgment for 6 % per annum interest on taxes claimed in this case, which taxes, as shown by the records, were assessed and due and delinquent before said law was enacted, and at a period when the laws of this State provided for an annual seizure and sale of land for taxes, and did not authorize any exaction of interest.

b. The provisions of said act, chapter 103 General Laws 1897, which impose on the delinquent tax-payer, and on his land, fees and charges not authorized by law at the time of the levy and assessment of taxes, as follows:

Attorney's fees.—$3.00 on first tract and $1.00 for each addition-tract in same suit.

Collector's fees.—$1.00 for each correct assessment of the land to be sold.

County clerk's fees.—$1.00 on each delinquent assessment recorded and certified.

Dist. clerk's fees.—$1.50.

102 Sheriff's fees.—$1.00 for selling and making deed to each purchaser.

Publisher's fees.—25c. for each tract advertised as delinquent.

And the appellate court erred in affirming the judgment of the trial court for the interest and several sums taxed as fees under the above provisions.

Fourth suggestion of error.—The trial court erred in holding that the enforcement of the collection of the several sums as specified above, and imposed by chapter 103 General Laws 25th Legislature, retroactively, and after the taxes were due, against the tax-payer or against his land, under the nomenclature of interest, attorney's fees, county clerk's fees, district clerk's fees and publisher's fees, is not a taking of appellant's property without due process of law, and the appellate court has erred in affirming the judgment of the trial

court allowing interest, attorney's fees, collector's fees, county clerk's fees and publisher's fees in a suit for taxes which were due before said act authorizing these charges was adopted.

Argument under Third and Fourth Suggestion of Error.

Petitioner contends that the act in question, in so far as it seeks to increase the amount due the State for taxes assessed and due prior to the passage of said act, by adding charges, under the nomenclature of interest, costs, etc., as above specified in third suggestion of error,—is void,—first, because said act is retroactive and said charges form no part of the tax, or authorized incident, for costs pertaining to such tax when the right of the State to such tax accrued,—second, because said act, in so far as it imposes these charges and directs their enforcement by suit under the semblance of interest, costs of sale and of suit, when in the very nature of things, said charges are not and cannot be interest or costs of sale or of suit, is an attempt to deprive the citizen of his property without due process of law.

The petition in this case shows that the taxes were all assessed and due and delinquent before the adoption of the act of 1897, prior to which date, there was no law in force charging the several
103 sums above specified either against the owner or against his land. Interest is not an incident of a tax and cannot be demanded in the absence of statutory authority. Cave *vs.* Houston, 65th Texas 317, 53rd Texas 157.

A retroactive law increasing the costs of court, might perhaps be sustained, as pertaining to the remedy, but the sum exacted as interest in this case has nothing to do with the remedy and the expenses incurred by the State in preparing to bring suit, although christened "fees, printer's cost, clerk's fees, etc." have no relation or connection with the remedy and they formed no part of the collector's costs when the right of the State to these taxes accrued.

While the violation of the constitutional guaranty, that no person shall be deprived of life, liberty or property, without due process of law, has in a great majority of reported cases, resulted from a departure from the modes of procedure applicable to the particular case under the laws, usages and custom of the country; yet it is well settled that the violation of this guarantee may arise from any unjust act or edict of any branch or department of the Government, notwithstanding the fact that such act or edict is being enforced by a judicial proceeding regular in every respect—the case at bar is, we submit, within the last-named category—in so far as the legislative act seeks by the foreclosure proceeding in this case to evade the legal status of its claim for taxes, as fixed by the alleged tax sale and this feature of the law will be discussed hereinafter; but said act is also violative of the constitutional guaranty of due process in so far as it provides, under the nomenclature of interest and costs to enforce the collection from defendant, by sale of his land, of sums of money which formed no part or incident of the indebtedness when it accrued and for which the defendant cannot be held personally liable. In the case of Ryan *vs.* The State, 7th Nebraska, 276,

the statute provided: "That upon all taxes remaining delinquent for the space of one year, a penalty of 10 % shall attach, which shall be collected by such delinquent-tax collector as a part of the tax."

An attempt was made to give this act a retroactive effect.

104 The court says: "This penalty by the expressed provision of the statute, becomes an inseparable part or portion of the taxes which were delinquent at the time the act was passed; and in the collection of them it cannot be separated from them in violation of the law." Now it is said that, "penalties may be prescribed for future delinquencies, independent of taxes, as a part of the machinery by which the Government is enabled to collect them;" but such penalty is not taxation and cannot be sustained as a tax or any part of the revenue raised by taxation. If then, such penalty can be enforced it must be imposed simply as a method or machinery by which the Government is enabled to collect future delinquencies in the payment of taxes, and cannot be applied or enforced in the collection of taxes previously levied or delinquent; for in such case the law would be retroactive in its operation and cannot be sustained; and therefore, to enforce the penalty will be confiscation and not taxation, it is said that "the legislature can exercise no such function without conflicting with the clause of the constitution which is intended to guard private rights against oppression;" and that "even in the absence of any fundamental guarantee, such a use of a legislative power would be considered as contrary to the great first principles of the social compact. It is opposed to all reason and justice and the very nature and spirit of our form of Government forbid us to believe that the people intended to entrust the legislature with any such power. There would be no limitation of the time for which such laws might be made to retroact or the sums which might be exacted under them, save only the will of the lawmaker and the public exigency. Despotism itself could not employ more arbitrary means." Citing State *vs.* Mayor, 8th Vroom.

The legislature of this State in the act in question plainly recognizes the principle enunciated in the foregoing case by prohibiting the enforcement of the 10% penalty against delinquents indebted for taxes due before the passage of the law. In no respect does this penalty differ in nature from the sums claimed in the case at bar under the nomenclature of interest, fees, costs, etc. They are charges created and imposed *ex*

105 *post facto*. Interest in its essential nature must be authorized by law and must enter into and form a part or incident of the debt or obligation when it is created. Imposed retroactively it is not and *and* cannot be interest. It is simply a penalty; and the mere fact that it is imposed as a percentage per annum cannot make the exaction interest when in fact, it was not a legal incident of the debt or obligations when it accrued. The same reasoning applies to the sums claimed as fees and costs. They form no part or incident of the taxes or of the costs of collecting the taxes when they became due. Under the law of this State, at the time when these taxes became due, the delinquent was liable for the taxes assessed against

him, and he could have been made further liable for the costs of sale if the State pursued its remedy of sale by the collector, or, if the State resorted to suit the delinquent could be held for the customary costs of suit. Any sums exacted retroactively by the legislature, or by the courts under its authority, call it interest, fees, penalty, or lagniappe, is, we submit, an arbitrary exaction and the taking of property without due process of law.

This constitutional guaranty is ably discussed by the court in Camp *vs.* Rogers, 44th Conn., 291, as follows: "An act of the legislature which arbitrarily and without reason makes one person liable for the act of another is void, either as against natural justice or as a violation of that article of the constitution which forbids the taking of any person's property without due process of law. As to the meaning of the expression due process of law, as used in many of the constitutions of the States of the Union, Cooley, in his Constitutional Limitations, page 355, says: 'We have met in no judicial decision a statement that embodies more tersely and accurately the correct view of the principles we are considering than the following,—from an opinion of Mr. Justice Johnson of the Supreme Court of the United States: "The good sense of mankind has at last settled down to this,—that these words were intended to secure the individual from the arbitrary exercise of the power of government, unrestrained by the established principles of private rights
106 and distributive justice."' Again he says, page 175: 'The bill of rights of the American constitutions forbid that parties shall be deprived of property except by the law of the land; but if the prohibition had been omitted, a legislative enactment to pass one man's property to another would nevertheless be void.'"

This case is cited for its satisfactory exposition of the meaning of the term "due process." Also to illustrate our contention that this act operates unjustly on the defendant in this cause by compelling him through the instrumentality of the foreclosure proceeding to submit to the exaction of charges under the guise of interest, fees, costs, etc., for which he is not personally liable,—charges which were not a lien or enforceable against his land when he acquired it. The court of civil appeals following the case of Conklin *vs.* El Paso, 44th S. W., 883, in its opinion says: "The lands were forfeited to the State by the sale for the taxes of 1884. The forfeiture to become absolute in two years, the offer of the State is to waive this forfeiture and restore the land to the owner if he will only pay the taxes accruing since then and six per cent. interest thereon together with the costs which have been incurred in making the sale and in making up the delinquent-tax list and of this suit. The State has waived its right of forfeiture on condition that the taxes and interest might be enforced against the land. This it might do." And in Conklin *vs.* El Paso, cited by the court in support of the above ruling, the above-named retroactive exactions are sustained upon a similar line of argument as follows: "It is contended that this act cannot retroact, so as to increase the sums due prior to its passage beyond what the laws authorize when the taxes, respectively, became due. While we agree with this view, it would seem that in cases

where a tax sale was regular and consequently all the title the owner had left, was a right within a certain time to redeem by paying double the taxes, or where in such case the period for redemption had expired and no right remained in the owner, he would not be entitled to the benefits of said act of 1895, except upon the terms it provided. It is apparent that payment of taxes and interest
107 from 1885 to 1895, at six per cent. would be less than the sum defendant would have been obliged to pay under the laws as they existed at the time of sale in order to redeem the property. A law authorizing the suit for for-closure for such taxes would, when such suit is brought, re-invest him with a right to redeem by paying taxes and interest, a less sum than the laws existing at the time of sale demanded for such redemption."

This language is "dicta,"—as the court holds that the sale, in that case was void, and that the retroactive charges of interest and fees could not be enforced. A fact which was probably overlooked by the court of civil appeals in disposing of this case. The assumption on which the reasoning, above quoted, is based, viz: That the State has title to the land, is not warranted by the law or the fact. The State has abandoned its claim of title and in this suit is asserting a lien on the land for the taxes,—thus preventing the defendant in this suit from contesting the validity of the alleged sale while the appellate courts by their ruling in this case and "dicta" in Conklin *vs.* El Paso assume the validity of the tax sale and assert that the State has title and is graciously relinquishing that title on condition that the delinquent owner will pay in addition to the taxes six per cent. interest, cost of the abandoned sale, costs of the new sale, printer's fees, clerk's fees and collector's fees, all, except costs of first sale, having been imposed retroactively and having no warrant in law other than the naked assumption that the abandoned sale might have been legal, and if legal, then these charges imposed retroactively are legal, because they do not exceed the sum that would be required under a repealed law, to redeem the lands at the time of sale. That is to say,—while the State could not impose interest, or penalties, or costs retroactively, yet it can by christening these exactions "equivalents of redemption forfeit money" enforce its gratuity, so called, by means of a suit,—petitioner earnestly protests against this effort on the part of the State to force him by a suit, to redeem his land,—surely it will not be contended for a moment, that the State could maintain a suit to recover the redemption money as a part of the tax, and if this redemption money could
108 not be thus recovered, how can it, we respectfully ask, be made the basis of charging other and different sums under the nomenclature of interest, costs, etc. Petitioner respectfully submits that the position relative to the retroactive charge of interest, etc., taken by the court of civil appeals, of the fourth district, in Conklin *vs.* El Paso (*supra*) and followed by the appellate court in this case, is not tenable. The State may, if it sees fit, abandon any title to the land bid in at the sale for taxes of 1884 and may offer to relinquish its claim or lien against the land on such terms as are deemed proper, but acceptance is optional with the delinquent. If

the offer of the State is accepted, the settlement is binding, not because the State could legally force the delinquent, by suit or otherwise to accept the same, but because it is a consummated agreement. To hold that the State can prescribe retroactively the terms of settlement and enforce those terms by suit, would, we submit, invest the State with a most arbitrary and unreasonable power, under which the extent of its exaction could be measured only by the will or whims of the legislative body. Until repealed by the act of 1897, the law required as the condition upon which redemption would be allowed the payment of double the amount of tax, penalty and costs of sale. No suit could ever lie to recover this additional amount or penalty, imposed only as a condition on which the State would relinquish its lien or claim on the land for the taxes,—a mere offer, to be accepted or rejected, as the delinquent might see fit; yet this offer on the part of the State is made, in Conklin *vs.* The State (*supra*) the basis for the demand of penalty as an equivalent for the redemption penalty, which, although it could not be recovered by suit, might thus nevertheless be enforced, if this decision is correct, under the nomenclature of interest, fees and costs simply because these charges in the nature of *ex post facto* penalty, do not exceed the redemption money that the State might get by consent of the delinquent in return for its release of the land,—these charges could be as logically sustained, we respectfully submit, on the ground that the defendant is, or ought to be, able to pay them.

Possibly the writ of error in Conklin *vs.* El Paso did not
109 properly raise the constitutional question of the violation of the guaranty of due process; but if it did the rule of *stare decisis*, does not apply to constitutional questions, Willis *vs.* Owen, 43 Tex. 41. And the appellate courts of this State are not bound to follow a case deciding a constitutional question if it be clear that the question has not been settled on principle.

Conklin *vs.* The State (*supra*) was an action of trespass to try title, in which the court finds the sale of the land void, and in adjusting the equities of the parties as it could properly do in the exercise of its general jurisdiction, gives judgment for the taxes. The delinquent-tax act of 1895 is cited by the court as authority for the imposition of interest, but the fact is, that the said act of 1895 does not fix any rate of interest and there was no law of this State fixing a rate of interest on delinquent taxes until the act of 1897, cited *supra*. The collection of taxes and the enforcement of penalties for delinquency is a proceeding "*in invitum*," and a warrant in law for every charge must be clearly shown. The offer of the State in these acts to relinquish the State's claim, on payment of the taxes due together with 6 % interest, and other charges, cannot be construed into a law fixing the rate of interest on delinquent taxes, it will be noted that this provision as to redemption is es-entially retroactive in its nature and effect. While the provision fixing the rate of interest must in its nature be prospective. In Traylor *vs.* The State, 46th S. W. 81, cited by the appellate court, the question of the validity of the interest and fees imposed after the taxes were due, if involved, was not mentioned or discussed in the opinion. *In* Masterson *vs.* The State,

42 S. W. 1003, also cited by the court, is not authority, we submit, on the question of the validity of the retroactive provision of the act of 1897, as the taxes recovered in that case were assessed for the year 1895 and accrued after the passage of the act of 1895 under which the action in that case was brought. The objection to the costs and penalties urged in that case seems to have been, that the 14th amendment was violated by discriminating against the tax-payer, to which the court replied, that the provision (as to costs and penalties) applies to all citizens alike. This is true, yet
110 we submit there is a question as to whether the legislature has not discriminated in favor of the State and its officials, and against the citizen by allowing attorney's fees and other charges not authorized in ordinary suits. In all probability the case of G. C. & S. F. R'y *vs.* Ellis, 165 U. S., was not called to the attention of the appellate court in the cases referred to in the opinion in this cause, nor the fact emphasized, that the violation of the 14th amendment was not so much in the discrimination, as in the exaction of sums of money under the nomenclature of interest, fees and costs, when such exactions were not, in fact, interest, fees or costs properly attaching to the levy and collection of taxes.

Fifth suggestion of error.—The trial court erred in overruling defendant's demurrer, and by its judgment holding that the act of the legislature of the State of Texas, (chapter 103, General Laws of the State of Texas) is not void, as a retroactive law, and as an attempt on the part of the State of Texas to take the property of its citizens without due process of law, by bringing suit against a subsequent purchaser of property which had been previously sold to the State for taxes, and subjecting such property to judicial condemnation and resale, and the appellate court erred in affirming the judgment of the trial court and directing a condemnation and a second sale of the land in the possession of the defendant who acquired said land after the first sale.

Argument.

The petition alleges that the lands were sold to the State for the taxes of 1884 and prays for judgment for the taxes on said land for the years from 1884 to 1896 inclusive. Defendant's answer which the appellate court construed to be an admission of ownership, states that the defendant acquired the lands about the year 1889. The petition and copy of the delinquent-tax record showed that the lands were assessed, for a number of years, as the property of several individuals and for the other years as the property of unknown owners, but the taxes were never assessed against the defendant.

These facts all appear in the opinion of the appellate court.
111 The collector had power to make the previous sale. If it is voidable it is because of irregularities in the proceeding, not for want of power to make a summary sale (McFadden *vs.* Longham, 58 Tex. 519) and the State could just as well ignore a judgment legally rendered against it and provide for a second suit, to determine the questions decided by a previous judgment. If the land had been sold to a private citizen, beyond question, the rights of the

delinquent and the purchaser must stand as they are fixed by the sale. The State cannot, we submit, by a retroactive law, change the legal status of this sale. If it was regular, the State could recover the land; if irregular, possibly, in a suit in equity, where this fact was shown, it might still enforce its equitable lien against the delinquent who had not paid his taxes; but when the legislature sets this sale aside by a retroactive edict, and directs a new proceeding to enforce its lien for the taxes, for which the land had already been sold, together with additional amounts not warranted in law at the time of the sale, and further directs the enforcement of these exactions, against the property after it has been conveyed to a subsequent purchaser, it is respectfully insisted that the constitutional guaranty of due process of law has been violated.

It is also a question whether under the constitution the legislature has power to increase, in any way, the lien for the annual assessment as fixed by the constitution, which is for the taxes proper as assessed.

Sixth suggestion of error.—The court erred in affirming the judgment of the trial court and holding thereby, that the constitution of this State does not, by necessary implication drawn from its provision for the collection of taxes and for sales of property for taxes, preclude legislation providing for special judicial sale to enforce collection of delinquent taxes.

(*Remark.*)

Petitioner respectfully asks the consideration of his arguments and authorities under his third and fourth assignments of error, page 7, of his brief in the appellate court.

Seventh suggestion of error.—The appellate court erred in
112 affirming the judgment of the lower court and in establishing a general lien upon all the surveys involved, for collector's, printer's, county clerk's fees and all costs of this suit in the court below, and in directing the lands to be sold first, as separate tracts for the taxes and interest claimed by the State, and directing the lands to be sold a second time under the same order of sale to enforce the collection of said printer's, collector's and county clerk's fee, and costs of court.

Argument.

There is, it is respectfully submitted, but one lien on the land, authorized by the constitution or by said chapter 103 General Laws of 1897.

Upon the grounds herein urged, your petitioner respectfully prays for a writ of error to the honorable court of civil appeals for the first supreme judicial district of Texas, sitting at Galveston, Texas, and for a citation in error as provided by law, and that on the final hearing of this application the judgment of the district court of San Augustine county, Texas, and of the honorable court of civil

appeals for the first supreme judicial district be reversed and the cause remanded with proper instructions.

Respectfully submitted.

ROB'T M. FRANKLIN,
Attorney for Appellant.

(Endorsed:) App. No. 2611. In the supreme court of Texas. J. C. League, appellant *vs.* The State of Texas, appellee. Petition for writ of error to the court of civil appeals for the first supreme judicial district of Texas, at Galveston. Filed in court of civil appeals at Galveston, Mar. 31, 1900. H. M. Knight, clerk. Filed in supreme court Ap'l 4, 1900. Chas. S. Morse, clerk. Granted. (Rob't M. Franklin, attorney for appellant.)

113 *Order of Supreme Court Granting Application for Writ of Error.*

J. C. LEAGUE *vs.* THE STATE OF TEXAS. } App. No. 2611. From San Augustine County, First District.

APRIL 12, 1900.

This day came on to be heard the application of J. C. League, for a writ of error to the court of civil appeals for the first supreme judicial district, and the same having been duly considered, it is ordered that said application be granted, and the writ of error issue, as prayed for.

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114 *Order of Submission in Supreme Court.*

J. C. LEAGUE *vs.* THE STATE OF TEXAS. } No. 906.

MAY 3RD, 1900.

Submitted on briefs and printed arguments for both parties.

Opinion of Supreme Court.

J. C. LEAGUE *vs.* THE STATE OF TEXAS. } No. 906. From First District, San Augustine County.

Under the provisions of chapter 103 of the General Laws of 1897, page 132, this suit was instituted in the district court of San Augustine county to foreclose the State's lien for the taxes of the years 1884 to 1896, inclusive, upon fourteen tracts of land lying in said county, patented in the name of the Southern Pacific Railroad Company.

115 It was alleged that the plaintiff in error was the owner of the said land, that it had been regularly assessed for taxes in the names of different parties for each year, and, after January 1st, 1885, each tract had been sold for the taxes of 1884, at which sale the State bid it in according to law. The petition alleged that the

county commissioners' court of San Augustine county had caused the tax collector of the said county to prepare a list of "all lands, lots or parts of lots sold to the State of Texas for the taxes since the first day of January, 1885, which had not been redeemed according to law," and also alleged that the county commissioners had examined and approved said list and caused the same to be published, as prescribed by said act. The petition was sworn to as required by the statute.

The defendant answered by a general demurrer and special exceptions and by special answer, which contained the following allegations: "And for answer in this behalf, defendant denies all and singular the allegations of plaintiff's petition, and further answering, defendant shows that he purchased the lands described in plaintiff's petition and exhibits about the year 1889; that said lands have been sold by the collector of taxes of San Augustine county for 1884 taxes and for the taxes of subsequent years and they have, in every instance, been bid in by the collector of taxes for the State of Texas, in obedience to the laws of the said State." The answer of the defendant was sworn to.

The evidence showed that the lands had been assessed for taxes in each year, as alleged, and that each survey had been sold for taxes of 1884 and bid in by the State; that the lands were not assessed as the property of the defendant for any year named, but were assessed in different names as owners, and for some years, as the property of unknown owners. The proof showed that the commissioners' court of San Augustine county had complied with the law in making the list and in causing the same to be recorded and published and that the land had never been redeemed from the State.

The case was tried before the court without a jury and judgment was rendered in favor of the State against the defendant,
116 League, foreclosing the State's lien upon the land described in the petition for the amount of the taxes due to the State, with the interest at six per cent. per annum and penalties as prescribed by the statute, with the cost provided by chapter 103, and the cost of court, and directing the sale of the land. It was also ordered that the purchaser be placed in possession within thirty days as in the case of ordinary foreclosures. The judgment was, by the court of civil appeals, reformed so as to eliminate the ten per cent. damages and that clause which awarded possession within thirty days, giving right of redemption within two years. As reformed, the judgment of the district court was affirmed.

The writ of error was granted because we were of opinion that the imposition of interest upon the taxes, after they had accrued, was violative of section 16, article 1, of the constitution, there being no law in force at the time the taxes were levied and assessed which authorized the collection of interest thereon. But, upon more careful examination of the case, we are satisfied that the judgment of the court of civil appeals is correct and must be affirmed.

We deem it unnecessary to enter into a discussion of the various grounds presented in the application for the writ of error; they are

well disposed of by the opinion of Chief Justice Garrett: However, upon the point on which the writ was granted, we will say that the answer of the defendant sets up the sale of the lands for taxes and the purchase of them by the State, insisting that the State is bound by its purchase. No attack is made upon the sale nor upon any of the proceedings leading up to it and it stands before the court, under the defendant's allegations, as a valid sale by which the title passed to the State. The State having acquired the title, had the power to waive its right, and in order to perfect the claim beyond all dispute, to foreclose its lien on the land as against the then claimant, and in doing so, had the authority to prescribe such terms as it deemed proper and just. The claimant of the lands being a party defendant, could have disclaimed any interest in it and might thus have escaped any cost for proceedings had after such disclaimer. The defendant
117 chose not to pursue this course, and he has no cause of complaint as the case stands before this court, because, by his own showing, he had no title to be affected by it and depended solely upon the grace of the State for whatever he might get out of the land. This conclusion is based upon the fact that the title in the State is perfect and it is not intended to express an opinion on the question when the proof does not show this fact.

The defendant claims that his general denial prevents the taking of the answer as true and that there was no proof showing that the State had title in the land or that the defendant himself was claiming title thereto. The law under which this proceeding is had required the pleadings of both parties to be sworn to. A general denial is not applicable to this case. It is similar to the practice in case of mandamus, where it is held that because a defendant is required to traverse the allegations of the plaintiff or to confess and avoid them, a general denial is no answer and will not prevent judgment being taken upon the petition and the answer. Sampson *vs.* Mercer, 68 Tex., 488. It was unnecessary for the State to prove the facts alleged and sworn to by the defendant. Ogden & Johnson *vs.* Bosse, 86 Tex., 344.

The judgment of the court of civil appeals is affirmed, with the costs of this court adjudged against the plaintiff in error.

T. J. BROWN,
Associate Justice.

(Endorsed:) No. 906, J. C. League, plaintiff in error *vs.* The State of Texas, defendant in error. Opinion. Judgment of the court of civil appeals affirmed. Filed in supreme court May 21, 1900. Chas. S. Morse, clerk.

Judgment of the Supreme Court.

J. C. LEAGUE
vs.
THE STATE OF TEXAS. } No. 906. From San Augustine County, First District.

Opinion delivered by Associate Justice Brown.

118 MAY 21ST, 1900.

This cause came on to be heard on writ of error to the court of civil appeals for the first supreme judicial district, and the original transcript in said cause being before the court, as well as the transcript showing the proceedings had in said court of civil appeals, and these having been duly considered, because it is the opinion of this court that there was no error in the judgment of the court of civil appeals: it is therefore considered, adjudged and ordered that the judgment of the court of civil appeals be in all things affirmed, which judgment is as follows:

"This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this court that there was error in the judgment of the court below in so far as it adjudged against the defendant a penalty of ten per cent. upon the taxes assessed against the lands described in the judgment and in allowing the plaintiff to recover for the taxes of 1884, it is therefore ordered that the judgment of the court below be reformed so as to omit said amounts, and it further appearing that, omitting said amounts, there is due the State of Texas, the sum of twelve hundred and thirty-two and $\frac{17}{100}$ dollars for taxes, interest and costs, with interest thereon at 6 per cent. per annum from September 9th 1899, upon the lands described in the petition, as follows, to wit:

1. Certificate 31*y*, abstract 260; total amount of the taxes, interest, and costs due on said lands on the 6th day of August, 1898, the sum of $69.47 for the taxes for the years 1885, '6, '7, and 1896.

2. Certificate 29*y*, abstract 261; total amount of taxes, interest, and costs, $65.26, for the taxes for the years 1885, '6, '7, '8, and 1896.

3. Certificate 34*y*, abstract 262; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.17.

4. Certificate 24*y*, abstract 263; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.63.

5. Certificate No. 28*y*, abstract 264; total amount of taxes, interest, and costs for the years 1885, '6, '7, 8, and 1896, $79.08.

119 6. Certificate 19*y*, abstract 265; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.22.

7. Certificate 40*y*, abstract 267; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, 1895, and 1896, $25.08.

8. Certificate 20*y*, abstract 268; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $66.87.

9. Certificate 33*y*, abstract 269; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.28.

10. Certificate 35*y*, abstract 270; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.64.

11. Certificate 36*y*, abstract 271; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, '9, 1890, '1, & '6, $115.97.

12. Certificate 27*y*, abstract 275; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.88.

13. Certificate 30*y*, abstract 276; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $54.00.

14. Certificate 32*y*, abstract 277; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.28.

15. Certificate 37*y*, abstract 278; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1890, $65.28.

16. Certificate 39*y*, abstract 279; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.59.

17. Certificate 38*y*, abstract 485; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, '9, 1894, & '5, $8.25.

18. Certificate 38*y*, abstract 486; total amount of taxes, interest, and costs for the years 1885 and 1887, $18.82.

And it is adjudged, ordered and decreed that a lien exists, in favor of the State of Texas, against each of said tracts above described, for the amount of taxes, interests and costs adjudged to be due on them respectively, which lien is hereby foreclosed of each of said tracts of land.

It is further adjudged that a lien exists against all of said
120 tracts of land collectively for the sum of one hundred and forty-four dollars, for printer's fees and costs due clerk and collector, which amount is included in the sum of twelve hundred and thirty-two and $\frac{77}{100}$ dollars heretofore adjudged in favor of the State of Texas, herein, which lien is hereby foreclosed on all of said tracts of land.

And it is further ordered that the clerk of the district court of San Augustine county do issue an order of sale directed to the sheriff or any constable of said county, commanding him to seize and sell said land as if under execution, each tract separately for the sum set out against them respectively as above described with interest, and all of said tracts jointly for the sum adjudged them as costs with interest, but if defendant, or his attorney shall at any time before the sale, file with the officer selling the same, a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivisions as the defendant may request, and in such case shall only sell as many subdivisions as near as may be to satisfy this judgment, interest and all costs; and after the payment of this judgment, interests and costs as fixed by the court below, due to the clerk, collector and printer, aggregating the sum of one hundred and forty-four dollars, and all costs of this suit in the court below, the remainder of the purchase price, if any, to be paid by said officer to the clerk of said district court to be retained by him subject to the order of the district court of said county for the period of two years, after which time the said court may order the same paid to

the State treasurer, who shall hold the same in trust to be paid to the defendant in the manner prescribed by law.

It is further ordered that the officer executing said order of sale shall make deed or deeds to the purchaser or purchasers at such sale upon their complying with the terms thereof; such sale and deed thereunder to be made subject to the right of defendant to redeem the land so sold within two years from the date of said sale, upon paying to the purchaser, double the amount of the
121 money paid by said purchaser for said land, which condition shall be expressed in the deed to the purchaser.

It is further ordered that the order of sale herein directed to be issued, shall have the force and effect of a writ of possession as between the parties to this suit, or any one claiming under the defendants, or either of them, by any right acquired pending this suit, to place the purchaser or purchasers in possession; and the officer executing said order of sale is directed by virtue thereof to place the purchaser or purchasers of such property at such sale in possession thereof within thirty days after such day of sale.

In the event said lands should not sell for enough to pay this judgment, interest and all costs, then it is ordered that no further execution issue in said cause from said district court. It is further ordered, and adjudged that the State of Texas pay all costs of this appeal and this decision be certified below for observance."

It is further ordered that the plaintiff in error, J. C. League, principal and his sureties, J. P. Alvey and J. R. Corvell, pay all costs in this court incurred, and this decision be certified to the district court for observance.

Motion for Rehearing in Supreme Court.

Filed June 4, 1900.

In the Supreme Court of Texas.

J. C. LEAGUE, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. 906.

Motion by plaintiff in error for a rehearing.

Plaintiff in error, in the above-entitled cause, moves the court to grant him a rehearing, and respectfully suggests that this
122 honorable court make inquiry as to whether it is in error in its rulings and judgment as follows:

First. In holding that the imposition, by the act of 1897 (chapter 103 General Laws), of interest, attorney's, collector's, county clerk's, printer's and sheriff's fees, as a lien on the land on which taxes had been assessed, after such taxes had accrued, and the enforcement of said retroactive charges by the foreclosure proceeding prescribed by said act is not a taking of property without due process of law.

Second. This suit being a special judicial proceeding to foreclose the State's lien for taxes, the jurisdiction of the court over the sub-

ject-matter was restricted by the act prescribing the procedure to the enforcement of the State's lien for taxes, and the court had no power to adjudicate the question of title, and conceding, only for the purposes of this proposition, that there is proof, or admission of title, in the record, any adjudication of the title, or of any right incident to the title or ownership of the property, is repugnant to the alleged cause of action, and counsel for plaintiff in error respectfully asks this court to enquire whether its ruling and judgment herein,—ignoring the allegations in the petition of defendant's ownership and the State's lien, and sustaining the retroactive imposition of interest and fees by finding that the State had title to the property, which would authorize said charges, and by adjudicating the issue of title without the introduction of muniments of title and without any attempt to deraign title from the sovereignty of the soil,—does not embody all the elements of an arbitrary edict or exaction enforced by this court by disregarding the usual and regular course of judicial procedure.

Third. Error is also suggested as to the ruling that the act of 1897 (chapter 103 General Laws) has in fact prescribed, or could, under the constitution of the State of Texas, prescribe a judicial proceeding *in rem* for the sale of land for taxes without citation or process bringing the delinquent against whom the taxes were
123-128 assessed into court and binding such delinquent by the proceeding.

Fourth. The petition in this case shows that the lands therein described were sold to the State for taxes for the year 1884, and that said lands were acquired by the defendant after said sale; no subsequent legislation could change or modify the respective rights of the State and this defendant as fixed under the law by these transactions, unless such legislation was predicated on the assent of the party whose right is to be affected, and this court has fallen into error in holding that the said act of 1897 is not unconstitutional and void in so far as it seeks to evade the legal status of the parties as fixed at the date when defendant purchased said land, by special judicial proceeding in which said defendant could not assert an independent outstanding title, and in which he is not permitted to traverse the allegations of the petition without denying under oath transactions of which, in the very nature of things, he could have no personal knowledge.

* * * * * * *

129 The Honorable T. S. Smith, attorney general, and the Hon. D. E. Simmons, counsel for defendant in error, both reside in the city of Austin, Texas. Plaintiff in error prays for notice to said counsel of the filing of this motion, and for a rehearing in this cause.

Respectfully submitted.

ROB'T M. FRANKLIN,
Attorney for Plaintiff in Error.

AUSTIN, TEXAS, *June* 14, 1900.

Having this day received a copy of the foregoing motion for rehearing, service of a copy on me is hereby waived.

T. S. SMITH,
By D. E. SIMMONS,
Attorneys for Defendant in Error.

130 (Endorsed:) Mo. No. 781. No. 906. In the supreme court of Texas. J. C. League, plaintiff in error *vs.* The State of Texas, defendant in error. Motion of plaintiff in error for a rehearing. (Original.) Filed in supreme court June 4, 1900. Chas. S. Morse, clerk. By F. T. Connerly, deputy. Overruled.

Order of Supreme Court of Texas Overruling Motion for Rehearing.

J. C. LEAGUE
vs.
THE STATE OF TEXAS. } Mo. 781. No. 906. From San Augustine County, First District.

JUNE 28TH, 1900.

This day came on to be heard the motion of the plaintiff in error for a rehearing, and the same having been duly considered, it is ordered that said motion be overruled; that the plaintiff in error, J. C. League and his sureties, J. P. Alvey and J. R. Coryell, pay all costs of this motion.

131 In the Supreme Court of the State of Texas.

J. C. LEAGUE, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. 906.

Petition for Writ of Error and Supersedeas.

J. C. League, plaintiff in error in the above-entitled cause feeling himself aggrieved by the judgment of the district court of San Augustine county, Texas, entered on the ninth day of September A. D. 1899 and by the judgment of the court of civil appeals of the first supreme judicial district of the State of Texas reforming and affirming said judgment of said district court on the 18th day of January A. D. 1900 and by the final judgment on writ of error rendered in said cause by the supreme court of the State of Texas on the 21st day of May A. D. 1900, and made final by an order overruling the motion for a rehearing on the 28th day of June, A. D. 1900, comes now by Robert M. Franklin his solicitor and petitions said court for an order allowing said plaintiff in error (defendant in the trial court) to prosecute a writ of error to the honorable Supreme Court of the United States of America, under an- in accordance with the laws of the United States in that behalf made and provided to the end that the manifest errors apparent in said judgment may be corrected and also that an order be made fixing the security which

said plaintiff shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended until the determination of said writ of error by the Supreme Court of the United States,—and your petitioner will ever pray.

ROB'T M. FRANKLIN,
Solicitor for Plaintiff in Error.

Allowed and the amount of the supersedeas bond fixed at $2,500.00.

R. R. GAINES,
Chief Justice of the Supreme Court of the State of Texas.

(Endorsed:) No. 906. In the supreme court of the State of Texas. J. C. League, plaintiff in error *vs.* The State of Texas, defendant in error. Petition for writ of error and for supersedeas to Supreme Court of the United States. Filed in supreme court of Texas July 16, 1900. Chas. S. Morse, clerk.

131½ *Supersedeas Bond for Writ of Error.*

Know all men by these presents that we, J. C. League, as principal, and Geo. Seeligson and Jacob Sonnentheil, as sureties, are held and firmly bound unto the State of Texas in the full and just sum of twenty-five hundred dollars to be paid to the said State of Texas, certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this — day of July in the year of our Lord one thousand nine hundred.

Whereas, lately at a term of the supreme court of the State of Texas held in the city of Austin in said State in a suit depending in said court between J. C. League plaintiff in error and the State of Texas, defendant in error, wherein was drawn in question the validity of a statute or authority exercised under said State, on the ground that being repugnant to the Constitution of the United States and the decision was in favor of such their validity a judgment was rendered against the said J. C. League, and the said J. C. League having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit and a citation directed to the Honorable Joseph D. Sayers, governor of the State of Texas and to the Honorable Thomas S. Smith, attorney general of said State, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said J. C. League shall prosecute said writ of error to effect and answer all damages and costs if he shall fail to make his plea good,

then the above obligation to be void; else to remain in full force and virtue.

J. C. LEAGUE. [SEAL.]
GEO. SEELIGSON. [SEAL.]
JACOB SONNENTHEIL. [SEAL.]

Sealed and delivered in presence of—
ROB'T M. FRANKLIN.
BRADFORD HANCOCK.

I, Geo. Seeligson, do swear that I am worth in my own right at least the sum of twenty-five hundred dollars after deduct-
132 ing from my property all that which is exempt by the constitutional laws of the State from forced sale, and after payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances on my property which are known to me; that I reside in Galveston county, State of Texas, and have property in said State liable to execution worth $2,500.00 or more.

GEORGE SEELIGSON.

Sworn to and subscribed before me this 14th day of July, A. D. 1900.

BRADFORD HANCOCK,
[SEAL.] *Notary Public in and for Galveston County, Texas.*

I, Jacob Sonnentheil, do swear that I am worth in my own right at least the sum of twenty-five hundred dollars, after deducting from my property all that which is exempt by the constitutional laws of the State from forced sale, and after payment of all my debts of every description whether individual or security debts and after satisfying all incumbrances of my property which are known to me; that I reside in Galveston county, State of Texas and have property in said State liable to execution worth $2,500.00 or more.

JACOB SONNENTHEIL,

Sworn to and subscribed before me this 14th day of July A. D. 1900.

BRADFORD HANCOCK,
[SEAL.] *Notary Public in and for Galveston County, Texas.*

Approved by—
R. R. GAINES,
Chief Justice of the Supreme Court of the State of Texas.

Endorsed: J. C. League, plaintiff in error *vs.* The State of Texas, defendant in error. Supersedeas bond for writ of error. Filed in supreme court of Texas July 16th, 1900. Chas. S. Morse, clerk.

133 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Texas before you, or some of you, between J. C. League, plaintiff in error and The State of Texas, defendant in error a manifest error hath happened, to the great damage of the said J. C. League as by his complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal United States Circuit Court, Eastern District of Texas.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of July, in the year of our Lord one thousand nine hundred.

C. DART,
Clerk of the Circuit Court of the United States for the Eastern District of Texas,
By GEO. H. BURNETT,
Deputy at Galveston.

Allowed by—
R. R. GAINE,
Chief Justice of the Supreme Court of the State of Texas.

[Endorsed:] J. C. League, plaintiff in error, *vs.* The State of Texas, defendant in error. Original. Writ of error. Filed in supreme court of Texas July 16, 1900 Chas. S. Morse, clerk.

134 UNITED STATES OF AMERICA, *ss:*

To the Honorable Joseph D. Sayers, governor of the State of Texas, and to the Honorable Thomas S. Smith, attorney general of the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Texas, wherein J. C. League is plaintiff in error and The State of Texas is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error men-

tioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. R. Gaines, chief justice of the supreme court of the State of Texas, this — day of ——, in the year of our Lord one thousand nine hundred.

R. R. GAINES,
Chief Justice of the Supreme Court of the State of Texas.

[Endorsed:] J. C. League plaintiff in error *vs.* The State of Texas defendant in error. Citation. Filed in supreme court of Texas July 16, 1900. Chas. S. Morse cl'rk.

Service of citation on behalf of the defendant in error, The State of Texas, is hereby waived.

Austin, Texas, July 19th, 1900.

JOSEPH D. SAYERS,
Governor of the State of Texas.
T. S. SMITH,
Attorney General of the State of Texas.

135 *Assignment of Errors for Writ of Error to Supreme Court of the United States.*

In the Supreme Court of the State of Texas.

J. C. LEAGUE, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. 906.

Assignment of errors for writ of error to the Supreme Court of the United States.

Now comes J. C. League, plaintiff in error, by his solicitor and says that the honorable supreme court of the State of Texas, in affirming the judgment of the district court of San Augustine county, Texas, as reformed and affirmed by the court of civil appeals of the first supreme judicial district of Texas, has erred in its opinion, rulings and judgment as follows:

First. In holding that the plaintiff in error is not deprived of his property without due process of the law of the land by the foreclosure in this suit of the alleged lien and the sale of his property to enforce collection of charges or burdens retroactively imposed by act of the legislature of the State of Texas (chapter 103 General Laws 1897) under the guise of interest, fees and costs, and added to the delinquent taxes that had accrued prior to the passage of said act.

Second. In holding that the provisions of said act for the judicial condemnation and resale of land previously sold to the State for taxes, can be enforced against such lands in the possession of a subsequent purchaser; and that said act does not violate the constitutional guaranty of due process of law in so far as it ignores the legal effect of prior sales and directs a second sale of the land involved in

this suit for the taxes for which such lands had been already sold.

Third. The honorable supreme court of the State of Texas,
136 has by its ruling and judgment in this suit, if not corrected, deprived plaintiff in error of his property without due process of law, by ignoring the fact, apparent of record, that the charges of interest, fees and costs were retroactively imposed and sustaining the judgment for said invalid fees, charges, etc., by finding as a conclusion of fact that the State has title to the lands involved, although said finding is not responsive to any issue raised by the pleadings and is repugnant to the allegations of the plaintiff's petition in the trial court, and to the judgment made and entered in this cause, establishing and foreclosing a lien on the property in question; and although said finding cannot be logically or legally deduced or inferred from the defendant's answer in the trial court.

ROB'T M. FRANKLIN,
Solicitor for Plaintiff in Error.

(Endorsed:) No. 906. In the supreme court of the State of Texas. J. C. League, plaintiff in error *vs.* The State of Texas, defendant in error. Assignment of errors for writ of error to Supreme Court of the United States. Filed in supreme court of Texas, July 16th, 1900. Chas. S. Morse, clerk.

137 CLERK'S OFFICE, SUPREME COURT.

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the foregoing one hundred and thirty-six pages contain a true and correct copy of the transcript of the proceedings had in the district court of San Augustine county, Texas, in its cause No. 1559, styled The State of Texas *vs.* J. C. League, together with all proceedings had on appeal to the court of civil appeals for the first supreme judicial district, at Galveston and on writ of error to the supreme court, as the same appears from records and papers pertaining to said cause now on file in my office; also the original writ of error and the original citation in error, with acceptance of service thereon, a copy of the writ of error bond, and the original assignments of error.

In testimony whereof, witness my hand and the seal of the supreme court of Texas, this the 4th day of August, A. D. 1900.

[Seal Supreme Court of the State of Texas.]

CHAS. S. MORSE, *Clerk.*

138 In the Supreme Court of the United States.

J. C. LEAGUE, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. —.

Stipulation of Counsel Designating those Parts of the Record which are to be Printed.

Be it remembered that counsel for both parties, in the above-entitled cause hereby agree that all parts of the transcript of said cause filed in the Supreme Court of the United States, which are not hereinafter designated, may be omitted from the printed record of said cause, and that the following designated parts shall be printed, to wit:

1st. Caption ..... Page 1
2nd. Plaintiff's amended original petition (omitting Exhibit "A" given in statement of facts) ..... " 1 to 4
3rd. Defendant's original answer.. ..... " 23 to 26
4th. Plaintiff's trial amendment ..... " 26
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Witness our hands this 23d day of August, A. D. 1900.

T. CHARLES HUME,
Attorney for Plaintiff in Error.
T. S. SMITH,
Attorney General of the State of Texas and Attorney for The State of Texas, the Defendant in Error.

140 [Endorsed:] No. —. In the Supreme Court of the United States. J. C. League, plaintiff in error *vs.* State of Texas, defdt. in error. Stipulation of counsel designating parts of the record to be printed.

141 [Endorsed:] File No. 17,877. Supreme Court U. S., October term, 1900. Term No. 392. J. C. League, pl'ff in error, *vs.* The State of Texas. Stipulation of counsel designating parts of record to be printed.

[Stamped:] Office Supreme Court U. S. Filed Sep. 10, 1900. James H. McKenney, clerk.

142 In the Supreme Court of the United States of America.

J. C. LEAGUE, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.
} No. 137 (October Term, 1901).

Stipulation of Counsel Designating, for Printing, a Part of the Record Omitted in Original Stipulation.

Be it remembered that counsel for both parties in the above-entitled cause hereby agree that in addition to the parts designated in stipulation heretofore filed in this cause, the following shall be printed in the record, to wit:

(16½.) Motion of plaintiff in error for a rehearing in the supreme court of the State of Texas. (Omitting from the printed record the argument of counsel contained in said motion.)

(24½.) This stipulation is also to be inserted.

Witness our hands this 2nd day of July, A. D. 1901.

T. CHARLES HUME,
Counsel for Pl'ff in Error.
C. K. BELL,
Att'y Gen'l of Texas, Counsel for Def't in Error.

143 [Endorsed:] No. 137 (Oct. term, 1901). In Supreme Court of the United States. J. C. League, pl'ff in error, *vs.* The State of Texas, def't in error. Stipulation for the addition of plaintiff's motion for rehearing in sup. ct. of Texas to the parts of the record to be printed.

144 [Endorsed:] File No. 17,877. Supreme Court U. S., October term, 1901. Term No. 137. J. C. League, P. E., *vs.* The State of Texas. Stipulation designating additional part of record for printing. Filed July 8, 1901.

Endorsed on cover: File No. 17,877. Texas supreme court. Term No. 137. J. C. League, plaintiff in error, *vs.* The State of Texas. Filed August 17th, 1900.

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 137.

J. C. LEAGUE, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

Error to the Supreme Court of Texas.

Brief and Argument for Plaintiff in Error.

STATEMENT OF THE CASE.

This is a suit, or special judicial proceeding, under and by virtue of the provisions of an act (chapter 103) of the 25th Legislature of Texas, against J. C. League, for the recovery of State and County taxes, interest, penalties and costs, alleged to be due to the State of Texas and the County of San Augustine, for the years from 1884 to 1896 inclusive, on fifteen 640-acre sections, and three fractional sections of land in said County known as Southern Pacific Railroad surveys, and amounting in the aggregate to $1,525.60, which sum is alleged to be a lien on said surveys; and the petition prays for foreclosure of said lien. The defendant's demurrers, general and special, to the petition, were overruled, and the Court, adhering to its rulings on the demurrers and upon evidence which the Court of Appeals holds to have been adequate, gave judgment for the taxes, interest, penalties, cost of sale for

year 1884, and costs of suit, and also for the fees allowed by said act—as costs—to the collector of taxes and county clerk for services in preparation of the delinquent tax lists and delinquent tax records required by said act.

For the convenience of this court, the several sums adjudged respectively as taxes, interest, penalties, fees and cost of sale, have been computed separately, and are shown as follows:

Taxes for the year 1884	$97 56
Interest on 1884 taxes	74 31
Penalty on 1884 taxes	17 07
Taxes from 1885 to 1896 inclusive	723 93
Interest on taxes 1885 to 1896 inclusive	365 23
Penalty on taxes 1885 to 1896 inclusive	103 50
Cost of sale	2 50
Clerk's fees and printer's costs	72 50
Collector's fees	69 00
Total judgment, exclusive of court costs	$1,525 60

Defendant, now plaintiff in error, perfected his appeal to the Court of Civil Appeals of the First Supreme Judicial District, and said court, on the 18th day of January, 1900, holding that the law did not authorize the enforcement of either the 10 per cent penalty, or the taxes for 1884, and that the law did not authorize a personal judgment against the defendant, reformed said judgment in said particulars and rendered judgment in rem, severally, against each of said tracts of land for its respective amount of taxes, interest and cost, and jointly against all of said tracts for the sum of $144.00 printer's, county clerk's and collector's fees, said judgment being for the aggregate sum of $1,232.77; and said judgment also established and foreclosed a lien against each tract for its respective amount of the taxes, interest and costs adjudged against such tract, and a lien collectively against all of said tracts for said sum of $144.00 printer's, clerk's and collector's fees, and directed sale as under execution; first, of each tract to satisfy the taxes, interest and costs adjudged against the same, and thereafter, the sale of all tracts collectively to sat-

isfy said sum of $144.00; also requiring the officer making the sales to place the purchaser in possession within thirty days after sale.

As thus reformed, the judgment of the District Court was affirmed by the Court of Civil Appeals. And, on the 1st day of February, 1900, plaintiff in error filed his motion for a rehearing in said cause, and on the 8th day of March, 1900, said court handed down a supplemental opinion further reforming said judgment, and directing that the writ of possession should not issue thereunder for a period of two years from date of sale, and until further orders of the District Court, and in all other respects overruling said motion.

On the 12th of April, 1900, plaintiff in error sued out a writ of error to the Supreme Court of Texas.

On May 21st, 1900, said court affirmed the judgment of the Court of Civil Appeals, and a motion for a rehearing having been overruled, plaintiff in error, on the 14th day of July, 1900, brought the cause, by writ of error, before this Honorable Court.

Plaintiff in error, by his demurrers to plaintiff's petition in the trial court, and by his assignments of error and his motions for a rehearing in the Court of Civil Appeals and the Supreme Court of Texas, raised, among other questions relating more especially to the Constitution of the State of Texas, the following Federal questions :

1. Whether the guaranty of "Due Process of Law" by the 14th Amendment of the Constitution of the United States is not violated by the act of the Legislature of Texas (chapter 103, General Laws 1897), in so far as said act provides a special judicial proceeding for the condemnation and resale of lands, which had been, prior to passage of said act, sold to the State for the same taxes.

2. Whether said constitutional guaranty of "Due Process of Law" is not violated by said act of the Legislature of Texas (chapter 103, General Laws 1897), in so far as said act creates retroactive charges and fixes a lien retroactively, for interest, and for attorney's, collector's, county clerk's, printer's and

sheriff's fees: Whether said exactions, imposed for the first time and added to the State's claim for taxes assessed and due before the passage of said act, are not in their essential nature ex post facto penalties, or arbitrary exactions imposed on the plaintiff in error, after the extent of his liability had been fixed by the laws in force, when his property was originally assessed against him, or against prior owners.

3. Plaintiff in error. by his motion for a rehearing (Rec., 48), prayed the Supreme Court of the State of Texas to inquire whether said court had not evaded a decision of the foregoing issues in this cause and effectually deprived plaintiff in error of his property, without due process of law, by rendering a judgment in this cause based on a finding that the State had title to the property on which it seeks to foreclose a lien. In other words, whether the judgment in this cause, although regular in form, is not, in reality, an arbitrary edict, based on the court's finding of law and fact, upon an issue of title, when said issue was not raised by the pleadings, and said finding contradicts the allegations of the State petition, to the effect, that the defendant owned the property in question, and the State of Texas had a lien thereon.

SPECIFICATIONS OF ERROR.

FIRST.

The court erred in holding that the plaintiff in error is not deprived of his property without due process of the law of the land by the foreclosure in this suit of the alleged lien and the sale of his property to enforce collection of charges or burdens retroactively imposed by act of the Legislature of the State of Texas (chapter 103, General Laws 1897), under the guise of interest, fees and costs, and added to the delinquent taxes that had accrued prior to the passage of said act.

SECOND.

The court erred in holding that the provisions of said act for the judicial condemnation and resale of land previously sold to the State for taxes, can be enforced against such lands

in the possession of a subsequent purchaser; and that said act does not violate the constitutional guaranty of due process of law in so far as it ignores the legal effect of prior sales and directs a second sale of the land involved in this suit for the taxes for which such lands had been already sold.

THIRD.

The Honorable Supreme Court of the State of Texas has by its ruling and judgment in this suit, if not corrected, deprived plaintiff in error of his property without due process of law, by ignoring the fact, apparent of record, that the charges of interest, fees and costs were retroactively imposed, and sustaining the judgment for said invalid fees, charges, etc., by finding as a conclusion of fact that the State has title to the lands involved, although said finding is not responsive to any issue raised by the pleadings, and is repugnant to the allegations of the plaintiff's petition in the trial court, and to the judgment made and entered in this cause, establishing and foreclosing a lien on the property in question; and although said finding can not be logically or legally deduced or inferred from the defendant's answer in the trial court. (Rec., 55.)

BRIEF AND ARGUMENT.

I.

PROPOSITIONS UNDER SECOND SPECIFICATION OF ERROR.

First—Prior to the enactment of chapter 103 (General Laws of Texas, 1897), the collector of taxes was empowered by law to levy upon and sell, after the first day in January in each year, the lands assessed for taxes for the preceding year.

AUTHORITIES.

Art. 8, secs. 13 and 15, Const. Texas.
Arts. 5176 to 5189, Rev. Stat. Texas, 1895.
McFadden vs. Longham, 58 Texas, 519.

Second—The sales of the lands involved in this case, for taxes, prior to the enactment of chapter 103, Laws 1897, merged the State's lien for said taxes in the estate passed or vested by the sales, and the status of the rights of the State and of other purchasers was fixed by those sales, after which the rights of the State or other purchaser must depend on the legality of the title acquired under the collector's deeds. Any right of a purchaser, at a tax sale, to revive or continue the lien for taxes, must depend on some statutory law of the State, in force and effect when the sales were made.

STATEMENT.

The petition alleges that the lands in question were sold for the taxes due for the year 1884. (Rec., 3.)

AUTHORITIES.

Desty on Taxation, 1011 and 1020.
Robson vs. Osborn, 13 Texas, 307.

Third—The act of the Legislature of Texas, chapter 103 (Laws 1897), is a violation of the constitutional guaranty of due process, in so far as its provisions are intended to avoid the legal effect of a prior sale for taxes, by directing a second foreclosure proceeding for collection of the same taxes.

STATEMENT.

The Federal question, suggested by the 2nd specification of error, was raised by the plaintiff in error (defendant in the trial court), by his 7th Special Demurrer (Record 4), by his assignment of error (Rec., 19), and by his motion for rehearing in Supreme Court of Texas (Rec., 48). Chapter 103 (General Laws Texas, 1897), creates or revives a lien for the taxes, interest, penalties and cost due on all lands that have been returned delinquent or reported sold to the State since January 1st, 1885. Prior to 1897 the charges and costs, added to the tax, upon sale for taxes, amounted to about $3.00 (Rev.

Stat., 5231). The act, chap. 103, sec. 9 (Laws 1897), added to the taxes for the years 1885 and succeeding years 6% per annum interest, together with the following fees: Attorney, $3.00; collector, $1.00; county clerk, $2.00; district clerk, $1.50; sheriff, $1.00; printer, 25 cents; and the act prescribed a special judicial proceeding in the District Court to foreclose the lien for the taxes, interest, penalties and costs. Those parts of said act, which are deemed essential to the determination of the Federal questions, raised in this case, are as follows:

Sec. 2. All lands or lots which have been returned delinquent, or reported sold to the State, or to any or town for taxes due thereon since the first day of January, A. D., 1885, or which may hereafter be returned delinquent or reported sold to the State or to any city or town, shall be subject to the provisions of this act, and said taxes shall remain a lien upon the said land, although the owner be unknown or though it be listed in the name of a person not the actual owner, and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to due by such assessment, for any preceding year.

Sec. 3. It shall be the duty of the Commissioners' Court of each county in this State immediately upon the taking effect of this act to cause to be prepared by the tax collector, at the expense of the county (the compensation for making out the delinquent tax record to be fixed by the Commissioners' Court), a list of all lands, lots, or parts of lots sold to the State for taxes since the first day of January, 1885, and which have not been redeemed, in their respective counties, and unorganized counties attached thereto, and to have such lists recorded in books to be called the "Delinquent Tax Record," showing when the lands or lots were reported delinquent or sold to the State for taxes, also the name of the owner at the time of such sale or delinquency, if known, the numbers of acres, the amount of taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year as shown by the records of the tax collector's office.

* * *

Sec. 5. Upon the completion of said Delinquent Tax Record by any county in this State, it shall be the duty of the Commissioners' Court to cause the same to be published in some newspaper published in the county, for three consecutive weeks. * * *

Sec. 6. Twenty days after the publication of such notice, or as soon thereafter as practicable, the Commissioners' Court, or the county judge acting for said court, shall file a list of all lands so advertised for taxes due for any year or number of years, the tax on which remains unpaid, with the county clerk of the county in which such lands are located, or if unorganized, then with the county clerk of the county to which said unorganized county may be attached for judicial purposes, and are to be sold under the provisions of this act, for all the taxes, interest, penalty and costs, and shall cause suit to be filed in the name of the State of Texas, in the District Court of said county, or if unorganized, then, in the District Court of the county to which said unorganized county is attached for judicial purposes, stating therein by apt reference to lists or schedules annexed thereto, a description of all lands or lots in such county upon which taxes and penalty have remained unpaid for any year or number of years since the first day of January, 1885, and the total amount of such taxes, with interest computed thereon to the time fixed for the sale thereof at the rate of six per cent per annum, and shall pray for judgment for the payment of the several amounts so specified therein, and in default thereof, that such lands be sold to satisfy said judgment for all taxes, interest, penalty, and costs, and for such other relief to which the State may be entitled under the law and facts. (All suits to enforce the collection of taxes, as provided in this act, shall take precedence and have priority over all other suits pending in the District Court.) The petition in such suits shall be signed by the attorney bringing the suit, and shall be verified by the affidavit of said attorney, or the county judge, to the effect that the averments contained in said petition are true to the best knowledge and belief of affiant, and the pleadings of the de-

fendant, except those of law, shall be verified by like affidavit of the defendant, his agent or attorney. * * *

Sec. 7. The proper persons shall be made parties defendant in such suits, and shall be served with process, and other proceedings had therein as provided by law for suits of like character in the District Courts of this State; and in case of foreclosure, an order of sale shall issue, and the land sold thereunder as in other cases of foreclosure. * * *

REMARK—Sections 13 and 15, article 8, Constitution of Texas, relating to sales of real estate for taxes, are as follows:

Sec. 13. Provision shall be made by the first Legislature for the speedy sale of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale of all lands and other property upon which the taxes have not been paid, and the deed of conveyance to the purchaser for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; *provided*, that the former owner shall, within two years from date of purchaser's deed, have the right to redeem the land upon the payment of double the amount of money paid for the land.

Sec. 15. The annual assessment made upon landed property shall be a special lien thereon, and all property, both real and personal, belonging to any delinquent taxpayer, shall be liable to seizure and sale for the payment of all taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.

AUTHORITIES.

Art. 1, sec. 10, ¶1, Const. U. S.
Art. 14, sec. 1, clause 3, Const. U. S.
Art. 1, secs. 16 and 19, Const. Texas.
Art. 8, secs. 13 and 15, Const. Texas.
Arts. 5176 to 5189, Rev. Stat. Texas.
Chapter 103, Gen. Laws 1897, Texas.

Yenda vs. Wheeler, 9 Texas, 408.
Clegg vs. State, 42 Texas; 605.
Meredith vs. Coker, 65 Texas, 31.

Many States of the Union have provided by statute for the enforcement of tax liens, in cases where sales for taxes have been, for any reason, declared illegal. (Desty on Tax., 1011 to 1020.) These acts are prospective, and apply alike to the State and the individual purchasing at a tax sale. They enter into and form a part of the contract, or transaction. Texas has no statute for this purpose, and it is a grave question as to whether the State has any right to assert its claim for uncollected taxes after the lien of the annual assessment, given by art. 8, sec. 15, of the Constitution, has been merged, by a sale by the collector, into the title, good or bad, passed by the sale. Certainly a claim of this character could not be asserted against a subsequent purchaser without notice, or a person claiming a superior outstanding title, and the studied effort manifested in the retroactive features of this act, to enforce a foreclosure, regardless of any "change of ownership," and regardless of any adverse vested rights, shows an utter disregard of the constitutional inhibition against the impairment of vested rights, and a fixed determination to evade the requirement of due process, and by means of a special foreclosure suit for taxes, in which no defense other than payment of the taxes could be urged, to compel subsequent owners to pay the taxes and the penalties and charges which they did not incur, without regard to any defenses, legal or equitable, that could be urged in the District Court in a case within its general jurisdiction.

The petition shows (Rec., 2), that the lands therein described were sold to the State for taxes of 1884; also, that defendant is the owner of said lands, and that he acquired them in 1889 after the sale; also by the exhibits (Rec., 10, et seq.), the lands were not assessed as his property or in his name. From 1876 to 1897 the tax collector had the power, and was enjoined by law, to sell after the first day of January of each year, all lands on which the taxes assessed for the pre-

ceding year had not been paid. (Const., art. 8, secs. 13 and 15; Rev. Stat., arts. 5176 to 5189.

The title passed by a tax sale in Texas is derivative, and the lien is fixed by the assessment. (Yenda vs. Wheeler, 9 Texas, 408; Clegg vs. State, 42 Texas, 605; Meredith vs. Coker, 65 Texas, 31; art. 8, sec. 15, Const.)

A sale passes only the title of the delinquent against whom taxes are assessed, and this act is rendered doubly subversive of the Constitution by the decision of our Supreme Court in this case, holding that the Legislature can and has prescribed a proceeding in rem, by which title can be passed by a foreclosure sale for taxes, without acquiring jurisdiction over the person of the delinquent taxpayer. In this connection we respectfully ask an inspection of the petition, to Supreme Court of Texas, for writ of error. (Rec., 30 to 33.)

II.

The first specification of error (Rec., 54), is submitted as a proposition, as follows:

The court erred in holding that the plaintiff in error is not deprived of his property without due process of the law of the land by the foreclosure in this suit of the alleged lien and the sale of his property to enforce collection of charges or burdens retroactively imposed by act of the Legislature of the State of Texas (chapter 103, General Laws 1897), under the guise of interest, fees and costs, and added to the delinquent taxes that had accrued prior to the passage of said act.

STATEMENT.

The added charges and fees were created by chapter 103 (General Laws, 1897). They are shown in statement (supra) under subdivision I. herein. The charges and fees prior to 1897 amounted to about $3.00. (Rev. Stat., art. 5231.)

AUTHORITIES.

Second and third clauses section 1, 14th Amendment Const. U. S.

Secs. 16 and 19, Bill of Rights, Const. of Texas.

Sec. 6, chap. 103, Gen. Laws 1897.

That interest is not an incident of a tax, and not authorized without statutory authority, see 53 Texas, 157; 55 Texas, 317; 58 Texas, 622; 1 Texas Civ. App., 411; 65 Texas, 619.

As to constitutional law, due process, etc.:

Cooley's Const. Lim., 369 and 353 (star paging).

Chicago, etc., Ry. Co. vs. Chicago, 166 U. S., 226.

Scott vs. McNeal, 154 U. S., 34.

G. C. & S. F. Ry. vs. Ellis, 165 U. S.

Ryan vs. State, 7 Neb., 276.

Camp vs. Rogers, 44 Conn., 291.

State vs. Mayor, etc., 8th Vroom.

ARGUMENT.

Plaintiff in error contends that the act in question, in so far as it seeks to increase the amount due the State for taxes assessed and due prior to the passage of said act by adding charges, under the nomenclature of interest, fees, costs, etc., as above specified, is void. First, because said act is retroactive, and said charges formed no part of the tax, or incident or costs pertaining to such tax when the right of the State to such tax accrued. Second, because said act, in so far as it imposes these charges and directs their enforcement by suit under the semblance of interest, costs of sale and of suit, when in the very nature of things said charges are not and can not be interest or costs of sale or of suit, is an attempt to deprive the citizen of his property without due process of law.

The petition in this case shows that the taxes were all assessed and due and delinquent before the adoption of the act of 1897. Prior to this date there was no law in force charg-

ing the several sums above specified, either against the owner or against his land. Interest is not an incident of a tax, and can not be demanded in the absence of statutory authority. (Cave vs. Houston, 65 Texas, 619; 55 Texas, 317; 53 Texas, 157.)

A retroactive law, general in its application, increasing the costs of court, might perhaps be sustained as pertaining to the remedy, but the sum exacted as interest in this case has nothing to do with the remedy, and the expense incurred by the State in preparing to bring suit, although christened "fees, printer's cost, clerk's cost, etc.," has no relation or connection with the remedy, and formed no part of the collector's costs or costs of sale when the right of the State to these taxes accrued.

While the violation of the Constitution's guaranty, that no person shall be deprived of life, liberty or property without due process of law, has, in a great majority of reported cases, resulted from a departure from the modes of procedure applicable to the particular case under the laws, usages and custom of the country, yet it is well settled that the violation of this guaranty may arise from any unjust act or edict of any branch of the government notwithstanding the fact that such act or edict is being enforced by a judicial proceeding regular in every respect. (Scott vs. McNeal 154 U. S., 34; Chicago, etc., Ry. Co. vs. Chicago, 166 U. S., 226.) The case at bar is, we submit, within the last named category in so far as it provides, under the nomenclature of interest, and the guise of costs, to enforce the collection from defendant, by sale of his land, of sums of money which formed no part or incident of the indebtedness when it accrued, and for which the defendant can not be held personally liable. In the case of Ryan vs. The State, 7 Neb., 276, the statute provided: "That upon all taxes remaining delinquent for the space of one year a penalty of 10 per cent shall attach, which shall be collected by such delinquent tax collector as a part of the tax." An attempt was made to give this act a retroactive effect. The Court says: "This penalty, by the expressed provision of the statute,

becomes an inseparable part or portion of the taxes which were delinquent at the time the act was passed; and in the collection of them it can not be separated from them in violation of the law. Now, it is said that 'penalties may be prescribed for future delinquencies, independent of taxes, as a part of the machinery by which the government is enabled to collect them;' but such penalty is not taxation and can not be sustained as a tax nor any part of the revenue raised by taxation. If, then, such penalty can be enforced, it must be imposed simply as a method or machinery by which the government is enabled to collect future delinquencies in the payment of taxes, and can not be applied or enforced in the collection of taxes previously levied or delinquent, for in such case the law would be retroactive in its operation and can not be sustained; and, therefore, to enforce the penalty will be confiscation and not taxation. It is said that the Legislature can exercise no such function without conflicting with the clause of the Constitution which is intended to guard private rights against oppression, and that even in the absence of any fundamental guarantee, such a use of legislative power would be considered as contrary to the great first principles of the social compact. It is opposed to all reason and justice, and the very nature and spirit of our form of government forbids us to believe that the people intended to entrust the Legislature with any such power. There would be no limitation of the time for which such laws might be made to retroact, or the sums which might be exacted under them, save only the will of the law-maker and the public exigency. Despotism itself could not employ more arbitrary means." Citing, State vs. Mayor, 8th Vroom.

The Legislature of the State, in sec. 13 of the act in question, plainly recognizes the principles enunciated in the foregoing cases, by prohibiting the enforcement of the 10 per cent penalty against delinquents indebted for taxes due before the passage of the law. In no respect does this penalty differ in nature from the sums claimed in the case at bar under the nomenclature of interest, fees, costs, etc. They are charges

created and imposed ex post facto. Interest in its essential nature must enter into and form a part or incident of the debt or obligation when it is created. Imposed retroactively it is not and can not be interest. It is simply a penalty, and the mere fact that it is imposed as a percentage per annum can not make the exaction interest, when, in fact, it was not a legal incident of the debt or obligation when it accrued. The same reasoning applies to the sums claimed as fees and costs. They formed no part or incident of the taxes or of the costs of collecting the taxes when they became due. Under the law, at the time when these taxes became due, the delinquent was liable for the taxes assessed against him, and he could have been made further liable for the costs of sale if the State pursued its remedy of sale by the collector, or, if the State resorted to suit, the delinquent could be held for the customary costs of suit. Any sums exacted retroactively by the Legislature, or by the courts under its authority, call it interest, fees, or penalty, is, we submit, an arbitrary exaction and the taking of property without due process of law.

This constitutional guaranty is ably discussed by the court in Camp vs. Rogers, 44 Conn., 291, as follows: "An act of the Legislature which arbitrarily and without reason makes one person liable for the acts of another, is void, either as against natural justice or as a violation of that article of the Constitution which forbids the taking of any person's property without due process of law. As to the meaning of the expression, due process of law, as used in many of the Constitutions of the States of the Union, Cooley, in his Constitutional limitations, p. 355, says: "We have met in no judicial decision a statement that embodies more tersely and accurately the correct view of the principles we are considering, than the following, from an opinion of Mr. Justice Johnson of the Supreme Court of the United States: 'The good sense of mankind has at last settled down to this, that these words were intended to secure the individual from the arbitrary exercise of the power of government, unrestrained by the established principles of private rights and distributive justice.'"

This case is cited for its satisfactory exposition of the meaning of the term "due process." Also to illustrate our contention that this act operates unjustly on the defendant in this cause by compelling him through the instrumentality of the foreclosure proceeding to submit to the exaction of charges under the guise of interest, fees, costs, etc., for which he is not liable, charges which were not a lien or enforceable against his land when he acquired it.

III.

The third specification of error, which is submitted as a proposition, is as follows:

The Honorable Supreme Court of the State of Texas has by its ruling and judgment in this suit, if not corrected, deprived plaintiff in error of his property without due process of law, by ignoring the fact, apparent of record, that the charges of interest, fees and costs were retroactively imposed, and sustaining the judgment for said invalid fees, charges, etc., by finding as a conclusion of fact that the State has title to the lands involved, although said finding is not responsive to any issue raised by the pleadings, and is repugnant to the allegations of the plaintiff's petition in the trial court, and to the judgment made and entered in this cause, establishing and foreclosing a lien on the property in question; and although said finding can not be logicallv or legally deduced or inferred from the defendant's answer in the trial court. (Rec., 55.)

STATEMENT.

Under the laws of Texas, real estate is assessed for taxes each year by entering description and valuation on appropriate rolls and carrying out in appropriate columns the several taxes authorized by law for state and county and school purposes. The taxes being ad valorem, and the rate per centum of the various levies being fixed in advance by law, the tax is computed by the assessor by finding the percentage of the total valuation authorized for each tax. The taxes are due and

payable after October 1st, and they are delinquent after January 1st of each year. The law prior to 1897 provided for annual levy and sale by the collector of taxes. The charge of interest and the various fees enumerated, supra, were not authorized prior to 1897. (See opinion Supreme Court, Rec., 44; Rec., 10 to 18, for copy of "delinquent tax record," made out under chapter 103, Laws 1897, quoted supra.)

AUTHORITIES.

Chicago, etc., Ry. Co. vs. Chicago, 166 U. S., 226.
Scott vs. McNeal, 154 U. S., 34.
Yick Wo vs. Hopkins, 118 U. S., 356.
Burton vs. Platter, 10 U. S. app., 657.

Referred to in support of the proposition, that the constitutional guaranty of due process operates with equal force upon the legislative, judicial and executive departments of government, and upon all agencies by which State law is made and enforced.

Cooley on Tax., 527.
Blackwell on Tax Titles, 527 (3rd ed).
Yenda vs. Wheeler, 9 Texas, 408.
Clegg vs. State, 42 Texas, 605.
Meredith vs. Coker, 65 Texas, 31.

Referred to in support of the proposition that, excepting one or two States where, by organic law, the tax levy, as contradistinguished from the annual assessment, is made a specific and preferred lien on all realty, the effect of a tax sale, through the United States, generally, as well as in Texas, is to pass a derivative title; and the conclusions and rulings of the Honorable State Courts of Texas, whereby a second sale for the same taxes, with added charges, is sustained, under the assumption that the second foreclosure is in the nature of an offer of redemption which the State has a right *to enforce by suit*, are, we respectfully submit, extra-judicial edicts, and in the case at bar, contradictory of the law, the pleadings and the facts shown by the record.

ARGUMENT.

Our State Courts, in disposing of this case, based their decision upon the assumption that the sale of the lands for taxes had vested title to the lands in question in the State of Texas—and that by reason of having title the State could, through the Legislature, with the co-operation of the court in a foreclosure proceeding—force the defendant who acquired the lands after sale, to pay the taxes and the retroactive charges, or give up his land. An inspection of the provisions of the State Constitution, and the Texas cases cited supra, will show conclusively that a sale of land for taxes in this State not not, under the Constitution and laws of this State, operate a forfeiture of the land to the State, and that the sale passes only the title of the delinquent owner or claimant against whom the lands are assessed. It will be noted also that the very act in question, chapter 103, declares that the State has a lien, which is inconsistent with the assumption of the State Courts (Rec., 24 and 44), that the State has title to these lands. The pleadings (Rec., 2 and 3), also contradict this assumption, and show that the State claims a lien, which it seeks to foreclose, and that the defendant is the owner of these lands; and we submit that the conclusion of our Honorable Supreme Court of Texas (Rec., 45), that plaintiff in error, by his pleadings, admitted that the State had title to these lands, is not legally or logically deducible from his answer in the trial court. This answer (Rec., 4 and 5), when taken in its entirety, plainly shows that the defendant, instead of an admission that the State had *title* to these lands, distinctly asserted his ownership by alleging as follows: "And the officers and agents of said State are attempting in this suit and by their demands on this defendant, made under and by authority of alleged laws of said State enacted long after said sales were made, to ignore said sales and avoid the legal effect of said sales, and said State by its pretended legislation and by its officers and agents is endeavoring to deprive this defendant of his said lands acquired by him after said land had been sold

and bought in by said State." The obvious purpose, intent and effect of this answer, especially when read in the light of the demurrers, was to show defendant's contention, that the suit was an attempt to take his property without due process of law, and the allegation, "that said lands had been sold by the collector of taxes of San Augustine county for 1884 taxes and for taxes of subsequent years, and that they have been in every instance bid in by the collector of taxes for the State," was made in connection with the allegation that the agents of the State were "seeking to ignore said sales and to avoid the legal effect thereof" by a second sale of the land in this suit. The allegation of the bare fact that a sale had been made by the collector and the land bid in for the State, could not, if it stood alone, be legally or logically construed into an admission that the State of Texas had title to these lands—a fact which would depend upon the validity of every tax on the rolls, and upon the regularity of every step leading up to the sale.

The distinction between the laws of those States where either a forfeiture, or an extinction of all previous titles is effected, "ex proprio vigore," by the law itself upon the happening of a given event, and those States, where a derivative title passes under a sale for taxes is shown in Cooley on Taxation, 527, and is ably discussed in Blackwell on Tax Titles, 3rd ed., 547, as follows:

"In those States where the tax is a charge upon the land alone, where no resort in any event is contemplated against the owner or his personal estate, and where the proceeding is strictly in rem, the tax deed will undoubtedly have the effect to destroy all prior interest in the estate. * * * In such case the tax law itself is notice to the whole world of the liability of the land for all public assessment, and every one claiming an interest in the land is bound at his peril to pay the tax and thus protect that interest from forfeiture or sale. If he neglects his duty in this respect, his title becomes extinct, and a new and independent title becomes vested in the purchaser, freed from all prior liens, incumbrances upon the

former estate and indeed of every interest carved out of the old fee. The fee of the land passes, and not the interest simbly, of the former owner. All that can be required of the purchaser in such cases is to show title out of the State, prove the regularity of the proceedings and introduce his deed, and he makes out a complete and perfect title to the fee.

"On the other hand, where the law requires the land to be listed in the name of the owner of the fee or of any other interest in the estate—provides for a personal demand of the tax—and in case of default authorizes the seizure of the body or goods of the delinquent in satisfaction of the tax—and in terms or upon a fair construction of the law, permits a sale of the land only when all other remedies have been exhausted—then the sale and conveyance by the officer passes only the interest of him in whose name it was listed, upon whom the demand was made, who had notice of the proceeding and who alone can be regarded as legally delinquent. In such cases the title is a derivative one and the tax purchaser can recover, in ejectment, only such interest as he may prove to have been vested in the defaulter at the time of the assessment. Any other construction of laws containing such provision would be in violation of the spirit which moved the Legislature to enact them and be a means of depriving innocent persons of their estate, persons who had no notice of the proceedings, and who in consequence of this omission can in no sense be delinquent."

The Texas authorities, cited supra, show that only a derivative title is passed by tax sales in Texas, and the same system for the assessment of taxes and the enforcement of the collection thereof has been in force in Texas ever since the adoption of the Constitution of 1845.

Counsel understand the rule to be that this Court will follow the construction placed by the State Courts upon their respective Constitutions and statutes, where such construction does not violate the Constitution of the United States. Also the further rule that this Court will not revise erroneous constructions of the State Courts of their respective State Con-

stitutions, when the Constitution and laws of Congress of the United States are not infringed.

But we respectfully insist that the constitutional requirement of due process, by the Constitution of the United States, will fall far short of its office in protecting the people in life, liberty and property if these rules are extended so as to exclude consideration, by this Court, of an error in the judgment of a State Court, resulting in an arbitrary edict, in a case where said Court has failed or refused to exercise a judicial discretion, and has determined the cause upon a false assumption of law or facts. (Yick Wo vs. Hopkins, 118 U. S., 356; Barton vs. Platter, 10 U. S. app., 657.)

And counsel for plaintiff in error respectfully asks this Court to examine the opinions of the Supreme Court of Texas and the Court of Civil Appeals (Rec., 24 and 44), as well as all other Texas cases that may be cited, for the purpose of determining whether the State Courts have not, in cases where the issue was properly raised, evaded the determination of the question of the illegality of the retroactive charges of interest, attorney's and other fees and costs, specified supra, by holding that the lands sold for taxes from 1884 to 1897 had been forfeited to the State, when the Constitution and the laws of the State and the pleadings all contradict the assumption and show that the only right the State has or can have, is a lien for the unpaid taxes—Whether the interjection of the suggestions or findings, by the Supreme Court, "that the State had title," and by the Court of Appeals, "that the lands had been forfeited," is not such a departure from established rules of procedure and jurisprudence as to render the judgments void (Windsor vs. McVeigh, 93 U. S., 274).

This Court holds, in the last named case, that the striking out of defendant's answer was in effect a denial of a hearing, invalidating the judgment. And in the case at bar, the rulings of the State Courts, that these lands had been forfeited or that the State had title to defendant's lands, is, we submit, tantamount to a refusal to allow him a hearing on this issue of title which was not, and could not be, raised in this case.

In Meredith vs. Coker, cited supra, the Supreme Court of Texas, in construing sec. 13, art. 8, quoted supra, says: "The power to confiscate property by the sanctification of a tax deed does not exist." And we respectfully ask this Court to apply this rule to the opinions and judgments of the State Courts in this case, if, as we contend, said Courts have wrongly assumed that the State had a title to the lands on which the State seeks to foreclose a lien.

Respectfully submitted,

F. CHARLES HUME,

Counsel for Plaintiff in Error

Supreme Court of the United States

OCTOBER TERM, 1901.

No. 137.

J. C. LEAGUE, PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

Error to the Supreme Court of Texas.

Brief and Argument for Plaintiff in Error

IN REPLY TO

Brief and Argument of Defendant in Error.

QUESTION OF JURISDICTION.

Counsel for defendant in error concedes (brief, p. 3,) that Federal Questions were raised and properly presented in the State Courts, and that final judgment has been rendered by the Supreme Court of Texas, the highest court of said State. But he contends that the federal questions were not necessarily involved in the decision, and that the case was decided upon issues entirely of state concern, pertaining entirely to the method for the levy and collection of taxes and to matters of pleading. (Brief, 4 and 5.)

On the other hand, plaintiff in error contends that the courts of the State of Texas in the enforcement of a special judicial proceeding under the provisions of chapter 103 (General Laws of Texas of 1897) are about to deprive him of his property without "due process of law," by serving him with

process in a court of general jurisdiction, and under the semblance of the exercise of the equitable jurisdiction of this court, compelling him to abandon his property or to appear as a defendant in a special judicial proceeding for the foreclosure of tax liens, under the provisions of said chapter 103, which usurp the judicial function of establishing liens for taxes, interest, penalties and costs, and which deny to subsequent purchasers or owners of the land involved, the right to make any defense, save that of payment of the taxes claimed. Plaintiff in error also contends, that said act when enforced by foreclosure in this proceeding of alleged liens on his lands, will deprive him of his property, without due process of law, by forcing him to abandon his land, or to pay certain sums of money, arbitrarily and retroactively charged against said lands as interest, fees and costs of suit, although said sums, first imposed in 1897 after said taxes had been assessed, could not be either interest, fees or costs of suit or in any sense incidents of the taxes accruing prior to 1897—and further, that these retroactive exactions are prohibited also by the Constitution of the State of Texas, and that the record in this case shows that the State courts have violated the constitutional guarantee by sustaining said charges, and holding in effect that the State might assert title to these lands, and foreclose its lien in the same suit.

Plaintiff in error respectfully suggests that while the decision of our Supreme Court of Texas in this case may seem to determine only "questions of State concern," as urged by defendant in error—its necessary operation and effect, as a judgment in a special judicial proceeding under chapter 103, Laws of Texas, 1897, to enforce a lien for taxes and for charges created by said act, is a denial of "due process of law," and we ask an examination of the record and of this act of 1897, in determining the revisory jurisdiction of this court; and without discussing the authorities cited on this question of jurisdiction to revise the determination of federal questions, we concede the test of this jurisdiction as fixed by this Court in its opinion delivered by Chief Justice Waite in

Brown vs. Atwell (92 U. S., 327), and quoted by counsel as follows:

"It is not enough to give us jurisdiction over the judgments of the State courts for the record to show that a Federal Question was argued and presented to that court for decision. It must appear that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it."

But we do not interpret the language of the court to mean that a State court may by its disposal of the case, ignore or evade a federal question when it has been regularly raised, and when it is a controlling issue in the case.

Remark: Counsel for defendant in error has fallen into error on page 2 of his brief, in stating the contention of plaintiff in error, as the latter does not urge that section 13 of said chapter 103 is retroactive. This section prescribes the terms on which lands that have been purchased by the State at tax sales may be redeemed. It was entirely competent for the Legislature to provide for redemption on any terms it may deem expedient, and the only reference to this section in our brief (page 14), is to the last clause prohibiting retroactive exaction of the 10 per cent penalty, this clause having been referred to "in arguendo" to show that the Legislature itself, in this instance, recognized the injustice of retroactive penalties.

Counsel is mistaken also in his summary (on same page) of the propositions of plaintiff in error. He says that plaintiff in error objects "2nd to that portion of the law which sets aside a previous sale of property bought in by the State, and places said property under the provisions of the law, subjecting it to a foreclosure of the tax lien, is retroactive * * * and therefore void." There is no express provision in this act renouncing the State's rights under this sale, the jurisdictional fact upon which the foreclosure proceeding is based, is the fact that the land had been sold to the State for taxes (section 2 of the act quoted on page 7 of our brief). If this

act had set aside previous sales, as assumed by counsel, the offer of redemption in section 13 thereof would be meaningless, and the Supreme Court of Texas could not have found as a fact in this case that, by reason of the sale of the lands in question to the State for the taxes of 1884, the State had title to these lands.

REPLY TO COUNTER-PROPOSITIONS AND ARGUMENT OF DEFENDANT IN ERROR.

I.

Following the order in briefs heretofore filed, and referring to propositions under Second Specification of Error (brief, pages 5 and 6), and to counter-proposition of defendant in error (page 7).

We concede that the method of summary seizure and sale by the collector, in force in Texas prior to the enactment of chapter 103, acts of 1897, was expressly authorized by the State Constitution, and that the method constituted due process, and we have in fact contended, before the State courts in this case, that said method was the only method permissible under the State constitution. But the court in this case, following City of Henrietta vs. Eustis, in 87 Texas, 14, holds the remedy under chapter 103 to be cumulative, and this question pertaining solely to a construction of the State constitution is not open to revision by this court, and we concede also that the right to redeem is not a vested right, and after the lapse of the period of two years fixed by the constitution, the terms on which redemption will be permitted, are entirely within the control of the Legislature. But we expressly deny any contention that the sale of the lands in question for the taxes of 1884 operated any forfeiture of title to the State, or vested any right in the State, other than the right to establish title through its courts by showing compliance with all the prerequisites required to divest the owner of his title. (See authorities cited on page 10 of brief; also McCormick vs. Edwards, 69th Texas, 106, which holds also that the purchaser

at a void tax sale can not recover even the taxes assessed upon the land and paid by his purchase.)

If the State court in deciding this case had reversed its line of decisions from the foundation of its government, and in construing the State constitution had held that a summary sale for delinquent taxes by the tax collector operates, "ipso facto," a forfeiture of the title of the delinquent taxpayer, the decision would have been a matter of state concern, unless this court is ready to hold that forfeiture by tax sale without office found, violates the constitutional guarantee of due process. But this question need not be met, because in every case in this State, where title has been asserted under a tax deed, it has been uniformly held that the purchaser claiming under the tax deed can not maintain his title against the delinquent owner, without showing in a court of competent jurisdiction that every prerequisite prescribed by the law has been fully complied with, and that the sale has been made in accordance with law; and in the case at bar the State courts do not overrule these decisions, or hold that a tax sale operates a forfeiture of the delinquent taxpayers' title. It is a fact that the opinions suggest a sort of quasi-forfeiture sufficient, it is contended by counsel, to warrant the State in maintaining this foreclosure proceeding against subsequent purchasers as well as against the delinquent taxpayer, and sufficient to warrant the enforcement of the ex-post-facto penalties and fees, notwithstanding the prohibition of the State constitution against retroactive laws, and the prohibition of State and Federal constitutions against arbitrary exactions. On p. 11 of their brief, counsel for plaintiff in error, call attention to the fact that the Court of Civil Appeals holds, that the act does not authorize suit for the taxes of 1884, and that the judgment as finally rendered does foreclose a lien for 1884, and that therefore there is no condemnation and resale for the same taxes. This we concede, but it suggests a query, as to how the State could relinquish the tax for 1884, and at the same time assert right of forfeiture under the sale for the taxes of that year.

If, as counsel seem to claim (page 9 of their brief), the State

of Texas has, by the act in question waived its rights under the sale for taxes of 1884, and provided for the establishment and foreclosure of its lien under the general equity jurisdiction of its courts, and in accordance with well recognized principles of equity jurisprudence, then the procedure prescribed by this act is "due process," and the trial court merely erred on questions of pleading and practice, in overruling defendants' 3rd and 4th demurrers (Rec., p. 4). But such is not the case, and on this question of waiver of rights under the tax sale of 1884, there seems to be some difference of opinion between counsel for the State and the State courts, as the courts hold this waiver to be operative only in the event the adverse claimant shall see fit to accept the terms dictated for those who may desire to redeem under section 13.

Chief Justice Garrett, delivering the opinion of the Court of Civil Appeals (Rec., p. 24), says: "The offer of the State is to waive this forfeiture and restore the land to the owner *if* he will only pay the taxes accruing since then, and 6 per cent interest thereon, together with the costs that had been incurred in making the sale and in making up the delinquent lists and of the suit. The State has waived its right of forfeiture *on condition* that the taxes with interest and costs shall be enforced against the land."

Chief Justice Brown in delivering the opinion of the Supreme Court (Rec., p. 45), says: "The State having acquired title, had the power to waive its right, and in order to perfect the claim, beyond all dispute, to foreclose its lien on the land as against the then claimant, and in doing so had the authority to prescribe such terms as it deemed proper and just. The claimant of the land being a party, defendant could have disclaimed any interest in it, and might thus have escaped any costs for proceedings had after such disclaimer." This language is, we believe, a clear cut interpretation of the intent of the act (chap. 103), and under it there is no alternative; the claimant of the land must satisfy the demands of the State, or give up his claim, and this is accomplished, we submit, by giving to a strictly legal foreclosure, to enforce tax liens, the

garb and semblance of a suit in equity to foreclose a lien under the general powers and jurisdiction of a court of equity. It is true, as contended by counsel for the State, that the sovereign can not be delayed in the collection of its taxes by tedious suits in equity to determine who is the rightful owner of the land. Proceedings for the collection of taxes are exceedingly summary and necessarily so. But the State can not, we submit, invoke the equitable powers of its courts to enforce its claims against adverse claimants or strangers, without subjecting itself to the jurisdiction of the court, and submitting to a determination of the case, upon the established principles of equitable jurisprudence, and we submit that an examination of the provisions of this act (chap. 103) will show that there is no intent to raise any questions of equitable jurisdiction whatever, but simply to bind all persons who may be made parties, regardless of any question of adverse title prior assessment, delinquency, or privity of title or estate. The record shows that these lands were assessed to parties other than this defendant, and to unknown owners (pp. 10 and 11); that plaintiff in error purchased them about 1889 (pp. 2 and 5); it does not show that any privity existed between him and the parties to whom the land belonged. The lien for taxes in this State is fixed by the assessment.

In State of Texas vs. Farmer (59 S. W. Rep., 541), Chief Justice Brown, in delivering the opinion of the court, says: "The lien of the State under the provisions of the constitution arises out of the assessment of the property, and does not exist until that assessment is made," and in Yenda vs. Wheeler, 9 Texas, the Supreme Court holds that an assessment to a person who is not the owner is invalid.

Justice Wheeler, delivering the opinion of the court, says (419): "The assessment in this case was made in the name of the supposed owner, M. Yenda. This, however, was a mistake. Manuel Yenda was neither the owner nor the grantee; he died several years before the grant was made. Caciana Sambrano was the grantee, and the owners were her heirs, the present plaintiffs."

This case is still the rule of property in this State; although called to the attention of the court in this case it was not questioned or overruled, and is beyond question the rule of property in suits between citizens of this State, and we respectfully insist that the State can not under this chapter make a different rule for the State, and in this feature of the act, as well as in the provision for an attorney's fee, we claim that the State discriminates in favor of itself as a litigant in its courts, against its citizens, and the act both discriminates against taxpayers as a class, and denies them due process of law.

Attention is respectfully requested to the following provisions of chapter 103, Laws 1897, which, we submit, show that said act as construed and enforced by the State courts in this case, will deprive plaintiff in error of his property without due process of law:

Sec. 2. All lands or lots which have been returned delinquent, or reported sold to the State, or to any city or town for taxes due thereon since the first day of January, 1885, or which may hereafter be returned delinquent or reported sold to the State or to any city or town, shall be subject to the provisions of this act, and said taxes shall remain a lien upon the said land, although the owner be unknown or though it be listed in the name of a person not the actual owner, and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, penalty and costs shown to be due by such assessment for any preceding year.

Sec. 3. It shall be the duty of the Commissioners' Court of each county in this State immediately upon the taking effect of this act to cause to be prepared by the tax collector, at the expense of the county (the compensation for making out the delinquent tax record to be fixed by the Commissioners' Court), a list of all lands, lots, or parts of lots sold to the State for taxes since the first day of January, 1885, and which have not been redeemed, in their respective counties, and unorganized counties attached thereto, and to have such lists recorded in books to be called the "Delinquent Tax Record," showing

when the lands or lots were reported delinquent or sold to the State for taxes, also the name of the owner at the time of such sale or delinquency, if known, the numbers of acres, the amount of taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year as shown by the records of the tax collector's office; and in making up the list or lists contemplated by this act, corrections and omissions in the description of any real estate embraced in such list or lists shall be made, so that when the corrections are made and the omissions supplied, the description will be such as is given in the abstracts of all the titled and patented lands in the State of Texas, or as required in section 12 of this act, such as may be furnished by the Commissioner of the General Land Office, and it shall be required in bulk assessments, to apportion to each tract or land separately, its pro rata share of the entire tax, penalty and cost. The list for each county, when certified to by the county judge, and assessment rolls and books on file in the tax collector's office, shall be prima facie evidence that all the requirements of the law have been complied with by the officers charged with any duty thereunder, as to the regularity of listing, assessing, levying of all the taxes therein mentioned, and reporting as delinquent or sold to the State any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge. * * *

Sec. 5. Upon the completion of said Delinquent Tax Record by any county in this State, it shall be the duty of the Commissioners' Court to cause the same to be published in some newspaper published in the county, for three consecutive weeks. * * *

Sec. 6. Twenty days after the publication of such notice, or as soon thereafter as practicable, the Commissoners' Court, or the county judge acting for said court, shall file a list of all lands so advertised for taxes due for any year or number of years, the tax on which remains unpaid, with the county clerk of the county in which such lands are located, or if unorganized, then with the county clerk of the county to which said unorganized

county may be attached for judicial purposes, and are to be sold under the provisions of this act, for all the taxes, interest, penalty, and costs, and shall cause suit to be filed in the name of the State of Texas, in the District Court of said county, or if unorganized, then, in the District Court of the county to which said unorganized county is attached for judicial purposes, stating therein by apt reference to lists or or schedules annexed thereto, a description of all lands or lots in such county upon which taxes and penalty have remained unpaid for any year or number of years since the first day of January, 1885, and the total amount of such taxes, with interest computed thereon to the time fixed for the sale thereof at the rate of six per cent per annum, and shall pray for judgment for the payment of the several amounts so specified therein, and in default thereof, that such lands be sold to satisfy said judgment for all taxes, interest, penalty, and costs, and for such other relief to which the State may be entitled under the law and facts. All suits to enforce the collection of taxes, as provided in this act, shall take precedence and have priority over all other suits pending in the District Court. The petition in such suits shall be signed by the attorney bringing the suit, and shall be verified by the affidavit of said attorney, or the county judge, to the effect that the averments contained in said petition are true to the best knowledge and belief of affiant, and the pleadings of the defendant, except those of law, shall be verified by like affidavit of the defendant, his agent or attorney. The County Collector, County Clerk and County Assessor shall furnish all affidavits, certified copies of the records of their respective offices, and such other evidence as may be in their possession by virtue of such office, as may be applied for by the County Attorney.

Sec. 7. The proper persons shall be made parties defendant in such suits and shall be served with process, and other proceedings had therein as provided by law for suits of like character in the District Courts of this State; and in case of foreclosure, an order of sale shall issue, and the land sold

thereunder as in other cases of foreclosure. * * *

Sec. 9. The county attorney, or district attorney in counties where there is no county attorney, shall represent the State and county in all suits against delinquent taxpayers that are provided for in this act, and all sums collected shall be paid immediately to the county collector.

In no case shall the compensation for said county attorney be greater than three dollars for the first tract in one suit, and one dollar for each additional tract, if more than one tract is embraced in same suit to recover taxes, interest, penalty, and costs; provided that those county attorneys who may have heretofore or may hereafter institute said suits, shall be entitled to an equal division with their successor in office of the fees allowed herein on all suits instituted by them, where the judgment has not been obtained prior to the vacation of their office. The collector of taxes, for preparing the delinquent list and separating the property previously sold to the State from that reported to be sold as delinquent for the preceding year, and certifying the same to the Commissioners' Court, shall be entitled to a fee of one dollar for each correct assessment of the land to be sold, said fee to be taxed as costs against the delinquent. The sheriff shall be entitled to a fee of $1.00 for selling and making deed thereto to each purchaser of land that he sells under judgment for taxes, which fee shall be taxed as costs of suit, and the District Clerk shall be entitled to a fee of one dollar and fifty cents in each case, to be taxed as costs of suit. And the County Clerk, for making out and recording the data of each delinquent assessment, and for certifying the same to the Commissioners' Court for correction, and for noting the same in the minutes of the Commissioners' Court, and for certifying the same, with corrections, to the Comptroller, and noting the same on his delinquent tax record, shall receive the sum of one dollar, to be taxed as costs against the land in each suit; provided, that in no case shall the State or county be liable for such fees, but in each case they shall be taxed as costs against the land to be sold under judgment for taxes and paid out of the proceeds of sale of same

after the taxes, penalty, and interest due thereon to the State are paid; provided, that where two or more unimproved city or town lots belonging to the same person and situated in the same city or town shall all be included in the same suit and costs, except those of advertising, which shall be twenty-five cents for every ten lots, or any number less than ten, taxed against them collectively just as if they were one tract or lot; and, provided, further, that where suits have been brought by the State against delinquents to recover tax due by them to the State and county, the said delinquent may pay the amount of the tax, interest, penalties, and all accrued costs to the county collector during the pendency of such suit, and the county attorney shall receive as compensation therefor two dollars for the first tract and one dollar for each additional tract embraced in said suit, and the District Clerk shall receive only one dollar, and the sheriff only one dollar in each case; but these fees shall be in lieu of the fees provided for such officers where suits are brought as herein before provided.

Sec. 15. * * * In all suits for taxes due the defendant shall be entitled to credits he can show due him for any year or number of years for which he may be able to produce receipts, but the State shall have judgment and foreclosure of tax lien for any year or years sued for where the defendant can not offer receipt or other positive proof showing the payment of the claim for the taxes.

Section 2, above quoted, effectually denies to the owner, whether a delinquent, or a subsequent purchaser, the right to question the validity of the assessment, by making the accrued taxes, as well as the interest, fees and costs, created by sections 6 and 9 of the act, a charge against the land, "although the owner be unknown, or though it be listed in the name of a person not the actual owner, and though the ownership be changed."

Sections 3, 5 and 6 provide that the lien and charges created by section 2 shall be enforced by suit, on all lands that have been sold for taxes since the 1st day of January, 1885, and prior to the passage of the act. There is no waiver of the

State's claim under the tax sale. The delinquency of every person sued under this act is established not by an assessment, but by the fact that the land involved had been previously sold to the State. A subsequent purchaser, is by the decision in this case, if not by the act itself, denied the right to bring in the delinquent owner under whom he claims. The act, section 6, also deprives him of making any defense unless he can swear to the existence of facts which in all probability could only be known to his grantor. And section 15 denies him the right to make any defense save that of payment of the taxes claimed in the suit which is brought under and by virtue of the lists made out under the supervision of the Commissioners' Court, and not by virtue of an assessment roll by the assessor or a delinquent roll made by the collector of taxes.

Section 7 provides that the proper parties shall be made defendants, and that the same proceedings shall be had, etc. The act does not specify who are proper parties. A reasonable presumption would be, we submit, that the proper parties were those who had been assessed and had become delinquent under the law. Under the rulings on the demurrers in this case it would seem that the county attorney, and not the law, must determine who is the proper party, and that whoever the county attorney wishes to estop by the foreclosure sale is the proper party defendant.

Under this act, it is clear that there was no chance for the defendant to assert any equities or make any defense save that of payment, and he was made a party simply to estop him by a decree, which carried with it the presumptions incident to a foreclosure of a lien in a court of general jurisdiction.

II.

Referring to First and Third Specifications of Error (pages 11 and 16), submitted as propositions, and to counter-propositions, on pages 14 and 20 of the brief of defendant in error, and first, to the counter-proposition on page 14. The power of the legislature to prescribe whatever procedure it may deem

expedient for the collection of taxes, or for the enforcement of the lien for taxes, is limited by the constitutional requirement of "due process" in State and Federal constitutions, and we have in the preceding article endeavored to point out the features of the act of 1897, and the rulings of the State court in relation to the collection of taxes accruing prior to the passage of the act, which plaintiff in error claims to be arbitrary and designed to force all claimants, whether delinquents or not, to pay the back taxes claimed, or to abandon their property. We do not contend that a change of remedies is prohibited even by the clause of the State constitution prohibiting retroactive laws, but that under the guise of changing the remedy there is an arbitrary attempt to change the relative status of the State, and the owners of lands that the State was seeking to subject to a lien for the back taxes, as it existed at the date of the act of 1897.

Our next contention is, that defendant in error, under the semblance of prescribing a remedy by foreclosure of the constitutional lien for taxes accruing prior to the passage of the act, has in effect tacked on to the assessed taxes certain arbitrary charges under the semblance of interest, costs of assessment and of collection, etc.—changes retroactively imposed—and for that reason retroactive penalties.

The objection to these charges is two-fold.

First, they are retroactive and prohibited by the State constitution. It may be suggested that, whether this law violates the State constitution, is a question on which this court will follow the decision of the State court. But we submit that the State court has not decided this question; that it remains to be decided in some case where counsel representing the defense may be more cautious than the counsel in this case, and may refrain from making any reference in his pleadings to the sale for taxes of 1884.

Associate Justice Brown, in delivering the opinion of the Supreme Court of Texas, says:

"No attack is made upon the sale nor upon any of the proceedings leading up to it and it stands before the court,

under the defendant's allegations, as a valid sale by which the title passed to the State." * * * "This conclusion is based upon the fact that the title in the State is perfect and it is not intended to express an opinion on the question when the proof does not show this fact." * * *

We respectfully submit that plaintiff in error was entitled to a decision of this retroactive feature of the law—more fully discussed under Third Specification of Error (brief, p. 16).

Secondly, we submit, the six per cent per annum interest, prescribed by section 6 of the act, and not by the redemption clause (sec. 13) as contended by counsel for the State, as well as the other charges retroactively imposed, are obnoxious to the Constitution of the United States, because when imposed retroactively, these charges can not, from the very nature of the case, be either interest or penalties imposed for the violation of a duty, and said charges are arbitrary exactions and imposed through a proceeding the necessary effect whereof, is to force any claimant of the lands, although as to these charges, his delinquency has not been established, to pay the charges or give up his land.

This objection is not based, merely, on the fact that these charges are retroactive, but that having been retroactively imposed, they can not be, from the inherent nature of the charges themselves, lawful exactions of interest or penalties, and in this connection we suggest—in reply to the suggestion of our State courts and of counsel, to the effect that plaintiff in error was a delinquent, knew that the taxes were due, and that it was his duty to have paid these taxes during the period between 1889 and 1897 when the act was passed—the State was claiming, as shown by its petition (Rec., 1), the 10 per cent penalty and the taxes of 1884, since adjudged in this suit to be unauthorized, and the only condition under the act of 1897, on which he could settle with the collector of taxes, was the payment of these unlawful claims. There had never up to 1897 been an assessment against him or an inquiry or report to determine his delinquency.

The law does not impose on the citizen a duty, when in the nature of things he can not be advised of that duty, and as to these back taxes plaintiff in error had a right to his day in court.

Our contention that charges of this character are arbitrary and illegal exactions, is sustained in State vs. Certain Lands (39 Minn., sec. 42, N. W., 477; cited also by opposing counsel, brief 19). The only difference between this case and the case at bar being that in this Minnesota case, the interest and other charges were added to, taxes omitted from prior assessments and retroactively imposed, as may be done in this State as well as in Minnesota, while in the case at bar the taxes had been assessed for each preceding year, and said taxes became delinquent under the law on the 1st day of January of each year. The principle is, we submit, the same, and we quote from the opinion by Mitchel, J., as follows:

"Now as the whole tax extended against a tract of land is an entirety, the owner can not pay a part of it without paying the whole, and if a part is illegal and he pays the whole, ordinarily it would be a voluntary payment and he could not recover back the illegal part. Hence in such case his only remedy is to wait until proceedings are commenced to force judgment against his land, and then to defend against the illegal part of the tax; and until it is deducted from the judgment of the court he has had no opportunity to pay the valid part of the tax, and consequently has been guilty of no default. Therefore, whether it be a case of 'current' tax, or an 'omitted' tax, if a party succeeds in his defense as to part of it as illegal, all the penalties on the whole tax previously imposed for its non-payment were unauthorized and can not be included in the judgment. This is precisely the present case. *That part of the tax assessed and extended against the lands in 1886 as 'back interest' was, as we have already decided, unauthorized and illegal.* To that extent appellant had a valid defense which it had a right to interpose, and in which it was entitled to succeed. Until the correct amount of the taxes had been determined by excluding this illegal addition, it had not been

in default, and no penalties could be legally imposed."

The foregoing reasoning was applied in a proceeding in rem to enforce an assessment charged, as presumably, it might be in Minnesota, directly against the land without regard to the ownership, and applies with greater force in this State, where the land must be assessed to the owner, if known, and it is sought to enforce these arbitrary charges against a claimant who acquired the land, after the taxes had become delinquent, and after they had been in many instances assessed as the property of other individuals, as to whom no privity of title or estate is shown in this case.

This case is cited by counsel, if we understand their contention (brief, 19), to show that the interest and other penalties, retroactively imposed in by the act of 1897, are legal. We submit that it sustains precisely the converse of the proposition, and that, moreover, sustains our contention, that the statute of 1897 is a denial of due process—as the statutes of Minnesota construed in that case, it would seem from the opinion, gave the owner almost every conceivable defense, except the one of contesting these charges.

This act of 1897, we submit, provides a second listing and assessment of property, and the addition of the charges specified without giving the owner charged by the original assessment any opportunity to be heard before this suit was brought, and that in this suit he has been denied a hearing by the force and operation of this act of 1897, and that the State courts refusing to inquire into the validity of the said charges have disposed of in this case upon one issue, not raised, by the pleadings and contradicting the allegation of the State's petition to the effect that the State has a lien for taxes.

REMARK.—Referring to the suggestions of counsel for the State as to delinquency refusal, or failure to pay taxes, difficulties in the way of enforcing taxes, and any implied contumacy, if such there be, of plaintiff in error, in failing to pay his taxes, asking pardon for our digression, we will state that counsel is correct so far as the confusion is concerned, that the tax proper as annually assessed on land is a lien un-

der the constitution which should be paid, but we believe this might have been accomplished, without multiplying the fees of the various officials, until in many instances they largely exceed the tax claimed. As to the prospective charges, this is a matter of State policy, but as to these, burdens which were not incidents of the tax, plaintiff in error, after repeated effort ever since he acquired these lands to ascertain the amount of taxes on his lands, and after repeated efforts to settle on any reasonable basis, have failed, now invokes the revisory jurisdiction of this Honorable Court.

Respectfully submitted,

Counsel for Plaintiff in Error.

No. 137.
By. J. Bell for D. E. S.
137

Office Supreme Court U.S.
FILED
JAN 11 1902
JAMES H. MCKENNEY, Clerk.

Filed Jan. 11. 1902.

IN THE SUPREME COURT OF THE UNITED STATES.

J. C. LEAGUE, PLAINTIFF IN ERROR,

VS.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

WRIT OF ERROR TO THE SUPREME COURT OF TEXAS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

C. K. BELL, Attorney General,
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Counsel for Defendant in Error.

VON BOECKMANN, SCHUTZE & CO., PRINTERS, AUSTIN, TEXAS.

IN THE SUPREME COURT OF THE UNITED STATES.

J. C. LEAGUE, Plaintiff in Error,

vs.

THE STATE OF TEXAS, Defendant in Error.

WRIT OF ERROR TO THE SUPREME COURT OF TEXAS.

Brief and Argument for Defendant in Error.

The statement of the case, as to the manner in which it was presented in the courts below and its present status, are sufficiently set forth by plaintiff in error in his brief now on file before this court. We will, for the convenience of the court, as well as ourselves, follow the order of plaintiff as therein given.

QUESTION OF JURISDICTION.

However, before presenting any argument upon the merit of the question raised, we desire to call this Honorable Court's attention to the question of jurisdiction. We believe that it is a long since settled doctrine in Federal jurisprudence, that no presumptions are indulged with respect to the jurisdiction of Federal courts, but that the question presented calling for the exercise of such jurisdiction must clearly appear from the petition presented or the record in the case. We understand and appreciate the doctrine that every court must perforce have the power to determine, upon doubtful matters, the question of its own jurisdiction. This question, when raised, has always received timely consideration at the hands of Federal courts whose powers are not coextensive with courts of equity and common law, but are limited by the Constitution and laws of Congress passed in pursuance thereof.

If any Federal question is involved in the case at bar, it arises by reason of a right claimed by plaintiff in error, to be protected by the Constitution of the United States, and of which right he is being deprived by the operation of a State statute. The right which it is claimed is violated is a right of property, protected by the last clause of Section 1, of Article 14, of the amendments to the Constitution of the United States, viz.: "*Nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.*" Plaintiff in error does not claim that any discrimination is made against him in favor of any other person or class of persons, but that the delinquent tax law of Texas (Ch. 103 of 25th Leg.), under which the present suit was brought, deprives him of his property "*without due process of law.*"

The law in question, as is the case with most State tax laws, is somewhat lengthy, but the particulars in which it is claimed that the law contravenes the above provision of the Federal Constitution may be briefly stated. It is urged that Section 13 of the act is retroactive. Section 13 is as follows:

"*Any delinquent tax payer whose lands have been returned delinquent or reported sold to the State for taxes due thereon, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this act, by paying to the collector the taxes due thereon since January first, 1885, with interest at the rate of six per cent. per annum and all costs and the penalty of ten per cent., as provided for in Section 16 of this act; provided, such penalty has accrued under the provisions and since the passage and taking effect of this act.*"

The propositions presented by counsel may be summarized, as follows: 1st, That portion of the above section which imposes six per cent. interest, is a penalty, there being no State law in force at the time the taxes became due which provided for interest; 2nd, that portion of the law which sets aside a previous sale of property bought in by the State, and places said property under the provisions of the law, subjecting it to a foreclosure of the tax lien is retroactive, thus both of the above provisions being retroactive are therefore void; 3rd, error in the judgment of the Supreme Court, in holding that under the pleadings, title to the property was shown to be in the State of Texas and therefore subject to the terms of redemption as imposed by Chapter 103.

We do not deny that these questions were raised and properly presented to the Supreme Court of Texas, nor that the judgment was final and was rendered by the highest court of the State of Texas. We understand, however, the law to be that one of the Federal questions enumerated in the statute (Sec. 709, R. S. U. S.) must have been *decided* by the Supreme Court of the State, and that the decision was *against the right* claimed by plaintiff in error, under the Constitution of the United States, or that the decision of the question was *necessary* to the judgment rendered in the case.

AUTHORITIES.

Murdock vs. Memphis, 20 Wall., 590.
Railroad Co. vs. Maryland, 20 Wall., 643.
Myrick vs. Thompson, 99 U. S., 291.
Citizens Bank vs. Board of Liquidation, 98 U. S., 140.
Williams vs. Oliver, 12 How., 125.
Klinger vs. State of Missouri, 13 Wall., 257.
Chouteau et al. vs. Gibson, 111 U. S., 200.
Detroit City Ry. Co. vs. Guthard, 114 U. S., 133.
Brooks vs. Missouri, 124 U. S., 400.
Scudder vs. Comptroller, 175 U. S., 32.

Chief Justice Waite delivering the opinion of the court in the case of Brown vs. Atwell, 92 U. S., 327, says: "*We have often decided that it is not enough to give us jurisdiction over the judgments of the State courts for the record to show that a Federal question was argued or presented to that court for decision. It must appear that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it.*

"Commercial Bank of Cincinnati vs. Buckingham's Executors, 5 How., 341.

"Lawler et al. vs. Walker et al., 14 How., 154.

"Railroad Company vs. Rock, 4 Wall., 180.

"Parmelee vs. Lawrence, 11 Wall., 38."

The same learned judge, in the case of Citizens Bank vs. Board of Liquidation, says: "*To give us jurisdiction under Sect. 709, Rev. Stat., it is not only necessary that some one of the questions mentioned in the section should exist on the record, but that the decision was controlling in the disposition of the cause.*

"Williams vs. Oliver, 12 How., 125.
"Klinger vs. State of Missouri, 13 Wall., 257."

What, then, does the record in this case disclose as to the decision of a Federal question by the Supreme Court of Texas? An examination thereof will show that the Court of Civil Appeals based its judgment on the regularity of all the proceedings by the officers as prescribed by the State law in question, and sustained that part of the judgment of the trial court which imposed six per cent. interest on the following grounds: "The lands were forfeited to the State by the sale for the taxes of 1884, the forfeiture to become absolute in two years. The offer of the State is to waive this forfeiture and restore the land to the owner if he will only pay the taxes accruing since then and six per cent. interest thereon, together with the costs which had been incurred in making the sale and in making up the delinquent lists and of the suit. The State has waived its right of forfeiture on condition that the taxes with interests and costs shall be enforced against the land. This it might do." (Trans., p. 24.)

The Supreme Court granted the writ of error to the Court of Civil Appeals because of the question presented by the imposition of the six per cent. interest. The court says:

"The writ of error was granted because we were of opinion that the imposition of interest upon the taxes, after they had accrued, was violative of Section 16, Article 1, of the Constitution, there being no law in force at the time the taxes were levied and assessed which authorized the collection of interest thereon. But, upon more careful examination of the case, we are satisfied that the judgment of the Court of Civil Appeals is correct, and must be affirmed.

"We deem it unnecessary to enter into a discussion of the various grounds presented in the application for the writ of error; they are well disposed of by the opinion of Chief Justice Garrett. However, upon the point on which the writ was granted, we will say that the answer of the defendant sets up the sale of the lands for taxes and the purchase of them by the State, insisting that the State is bound by its purchase. No attack is made upon the sale nor upon any of the proceedings leading up to it, and it stands before the court, under the defendant's allegations, as a valid sale by which the title passed to the State. The State having acquired the title, had the power to waive its right, and in order to perfect

the claim beyond all dispute, to foreclose its lien on the land as against the then claimant, and in doing so, had the authority to prescribe such terms as it deemed proper and just. The claimant of the lands being a party defendant, could have disclaimed any interest in it and might thus have escaped any costs for proceedings had after such disclaimer. The defendant chose not to pursue this course, and he has no cause of complaint as the case stands before this court, because, by his own showing, he had no title to be affected by it and depended solely upon the grace of the State for whatever he might get out of the land. This conclusion is based upon the fact that the title in the State is perfect and is not intended to express an opinion on the question when the proof does not show this fact." (Trans., pp. 44 and 5.)

Thus it clearly appears from the opinion itself that no Federal question was decided by the Supreme Court of Texas. If not decided, was it necessary to decide it in order to sustain the judgment of the court? The principle upon which the case at bar was decided, is universally recognized as one founded upon common sense and justice; furthermore, it adds greatly to the simplicity of procedure and the efficiency of the court in the despatch of business. The plaintiff in error did not in the trial court set up any defense to the justice of the tax demanded, further than that he was, as it were, an innocent purchaser, nor did he urge or show any irregularity in the tax proceedings of any year or of the sale for the taxes of 1884. On the contrary, he insisted in his answer that the State was bound by said sale.

It is too clear for controversy that the *method for the levy and collection of State and county tax is purely a matter of State concern. Equally so, is the question of pleading, provided one is not deprived of his right to be heard.*

The case was tried before the district court without a jury. It found generally on the pleadings and the proof, there being no law requiring a special finding of facts and a written opinion. The Supreme Court finds that upon the pleadings and the proof, that title to the property in controversy passed to the State of Texas by the sale for the taxes of 1884; at least, such a sale as would justify the imposition of the six per cent. interest and the costs of this procedure in accordance with legislative enactment.

In the case of Bolling vs. Lersner, 91 U. S., 595, Mr. Chief Justice Waite says: "We cannot re-examine the judgment or

decree of a State court simply because a Federal question was presented to that court for determination. To give us jurisdiction, it must appear that such a question was in fact decided, or that its decision was necessarily involved in the judgment or decree as rendered." Further, he says: "But if we go further, and look to the opinion of the court, which, in this case, has been certified here as a part of the record, we find the Federal question was not decided." In the case of Melendy vs. Rice, 94 U. S., 797, the same judge says: "*Whenever the judgment of the highest court of a State is brought here for the re-examination of some decision of a Federal question, we must consider the question as it comes to us from that court. This record shows that the question below was whether a finding of fact by a referee should be set aside because not sustained by the evidence. Upon writs of error to the courts of the United States, we cannot be called upon to decide such a question, because the finding of the court below as to facts is conclusive upon us.*"

"Morris vs. Jackson, 9 Wall., 127.

"Insurance Company vs. Sea, 21 Wall., 160."

Applying the doctrine, as above announced, can it not be said from the opinion of the Supreme Court of Texas which is a part of the certified record (Trans., pp. 43-45) that no Federal question was decided, and that the question presented for review is, does the evidence in the case justify the conclusion of the Supreme Court that the title to the lands in question was in the State of Texas by reason of the sale for the taxes of 1884.

It will not be presumed that a decision of the Supreme Court of a State was based upon other considerations than those mentioned in the opinion. (Keith vs. Clark, 97 U. S., 454.)

Judge Brown, of the Supreme Court of Texas, delivering the opinion, says: "This conclusion is based upon the fact that the title in the State is perfect, and it is not intended to express an opinion on the question when the proof does not show this fact." (Trans., p. 45.)

The effect to be given pleadings is well settled in this State.

Sampson vs. Mercer, 68 Texas, 488.
Ogden et al. vs. Bosse, 86 Texas, 344.

It is a question of local and general law not in any way involving a Federal question, and is not reviewable by this Honorable

Court. In the case of Chouteau vs. Gibson, 111 U. S., 200, which was a suit to obtain a conveyance of certain lands, to which the defense of *res adjudicata* was set up, the court says: "Whether an equitable title could be set up in bar of the action at law brought by Gibson, the holder of the legal title, to recover possession, is a question of State law upon which the judgment of the State court is conclusive. The same is true of the question whether the pleadings in the former action were such as to present the equitable defense in proper form for final adjudication. The court below has decided that the pleadings were sufficient; * * * It is apparent, therefore, that no Federal question which there may have been in the case was decided by the State court, and that the decision of such a question was not necessary to the final decree rendered."

If we are not correct in our view of the law as applicable to the question of jurisdiction, we beg leave to submit the following upon the merits of the case. We do not think it necessary to consider separately the three propositions under the *second specification of error* as set out by counsel for plaintiff in error. We submit the following

COUNTER-PROPOSITION.

The State has an election of remedies in the collection of taxes. It may proceed under the summary power of seizure and sale given an administrative officer, or it may provide for collection by means of a suit and foreclosure of the tax lien. The right to redeem after two years from date of sale, not being a vested right, may be changed by the Legislature. After forfeiture, by sale to the State, the resulting rights of the State may be waived, there being no other parties interested therein.

AUTHORITIES.

Constitution of Texas (1876), Art. 8, Secs. 3, 13 and 15.
Revised Statutes of Texas (1895), Arts. 5176 to 5189.
Ch. 103, Acts of Twenty-fifth Legislature.
City of Henrietta vs. Eustis, 87 Texas, 14.

ARGUMENT.

There is no contention between counsel for plaintiff in error and counsel for the State in reference to the method pursued by

the State in the forced collection of taxes prior to the passage of the law of 1897 (Ch. 103, Session Acts Twenty-fifth Legislature).

Article 8, Section 3, of the Constitution, provides: *"Taxes shall be levied and* COLLECTED BY GENERAL LAWS *and for public purposes only."* There is no necessity in the consideration of this case to inject into it difficult questions which do not properly arise. Whether the State could, under the above section, or Sections 13 or 15, of Article 8, of the Constitution, proceed by suit in the collection of taxes without any act of the Legislature authorizing such procedure, is not necessary to consider in this connection, because the State never undertook such a method of collection. (As to the power, see Cave vs. City of Houston, 65 Texas, 619; City of Henrietta vs. Eustis, 87 Texas, 17.)

The experience of a number of years had taught the legislators of the State that very serious defects existed in our tax laws, especially in collecting taxes due the State and counties. This was shown by the great amount (constantly increasing) of the taxes unpaid and long past due; and further shown by the indifference exhibited by citizens of the State in allowing their landed property to be sold for taxes due thereon and never redeeming same unless compelled to do so when they wished to borrow money thereon or when about to make a sale, the condition precedent to which was a clear title. The experience of litigants in their attempts to hold property under and by virtue of a tax deed had created among the people an idea that upon a contest taxes could not be collected. This proved to be practically true when the tax was attempted to be made out of land by the summary sale as exercised by tax collectors. The situation demanded of the Legislature some remedy for existing evils. In Chapter 103, of the General Laws of 1897, a method is provided not only for collecting taxes then delinquent, but for future delinquencies. It purports to cover the entire field and provide a general system for *the collection* of all ad valorem taxes to take the place of the system which had been previously in force. That system was an exercise by the tax collector of the power given him to levy upon and seize personal property sufficient to satisfy the demand for taxes, and in the event this was not done, then to summarily seize and sell one's land. This was done without any judicial process to determine any disputed issues.

The material changes which have been made are to have a judi-

cial inquiry and determine the validity of the tax previous to a sale of the property, and not afterwards, and to change the burden of proof. The evident purpose of the act in question is to enforce a lien for delinquent taxes against the land; *a lien given by the Constitution and fixed by the levy and assessment of the tax.* The title of the act does not refer to a delinquent taxpayer against whom or in whose name the tax was assessed, nor to the owner of the land; but provides for the collection of taxes, *"making such taxes a lien on the lands taxed; establishing and continuing such lien."* THE FIRST SECTION of the law defines, for the purpose of taxation, *real property.*

SECTION 2 includes within the provisions of this law all taxable real property of the State, and further says *"and said taxes shall remain a lien* upon the said land, although the owner be unknown, or though it be listed in the name of a person not the actual owner, and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to be due by such assessment, for any preceding year."

We have no doubt that the county attorney, representing the State, could have brought suit TRESPASS TO TRY TITLE, on the theory that the State was the owner and holder of the legal title to the land in controversy. However, he saw proper to pursue the remedy set out in Chapter 103, of the Acts of 1897, viz.: the foreclosure of the tax lien, regardless of whether the sale for the taxes of the year 1884 conferred upon the State a legal title. In view of the general bad results in efforts to show all the necessary steps leading up to and constituting the *power of sale*, besides the *regularity* of the sale itself, the county attorney would have been fully justified in presuming the invalidity of the sale. If the sale was void, there is no question that the State would have the right to foreclose its lien for the taxes for the *year 1884*, this being the tax the failure to pay which caused the summary sale by the tax collector. (McInery vs. Reed, 23 Iowa, 416 and 417; Mayor vs. Colgate, 2 Kernan, N. Y., 147.)

There is no merit in the contention of plaintiff that the sale for the taxes of 1884 merged the State's lien for the taxes of even that year into the estate which passed by the sale, for the reason that the State gives back any title she might have acquired and

the parties or those claiming title under them are placed in *statu quo*—no injury resulting to either party.

While the State may have had title to lands sold under the summary power of tax collectors, her policy, at least, is indicated by the laws in force which pertain to the disposal of such lands and the course pursued by the administrative officers of the State in reference thereto.

Article 5194, of the Revised Statutes, provides that the owner or his agent may redeem land sold to the State. Article 5195 is as follows: "In case said land shall not have been redeemed as provided in Article 5194, then the same may be sold as provided by Article 5193." An examination of Article 5193 *discloses no method for the sale of such lands by the State.* Said article provides that a deed shall be executed to the State, which deed shall include all tracts of land bid off to the State at the tax sale, and make due return thereof under such forms and directions as the Comptroller may furnish and direct.

To further show the policy of the State as to lands which have been sold and bid in by the State for want of a purchaser, I quote the following portion of ARTICLE 5193: "*And after sale and purchase by the State of any real estate it shall not be lawful for said collector to levy upon or advertise or sell the same for any remaining or accrued taxes due thereon until the same shall have been redeemed by the owner or is sold by the State.*"

The article of the statute providing for redemption by the owner, his heirs or assigns or agent, provides that he may do so by depositing with the collector of the county in which the lands were sold double the amount of the purchase money and all *accrued taxes* thereon, within two years from the date of deed to the State.

Whether the State, upon the receipt of the deed from the collector became the true legal owner of the land, or whether it became, so long as there was a right of redemption, merely the holder of an equitable title to such time as should suit the convenience of the owner in the payment of the delinquent taxes, can not affect the question of the policy of this State in seeking to give every chance possible to pay all taxes due. This view is greatly strengthened by observing the redemption laws passed by the Legislature at almost every recurring biennial session.

The right of the owner in the case at bar, to redeem the property, expired twice by the failure of the Nineteenth and Twenty-

second Legislatures to pass an act extending the time for redemption. It is unnecessary at this time to consider whether the sale for the taxes of 1884 was valid. If void, the cases cited above sustain the position that the State would still have a lien for the taxes due and unpaid, and could proceed to collect same.

We call the court's special attention to plaintiff's *third proposition* on page 6 of his brief, wherein he claims the law, authorizing this suit, is unconstitutional as not being due process of law, "*in so far as its provisions are intended to avoid the legal effect of a prior sale for taxes, by directing a second foreclosure proceeding for collection of the same taxes.*" Counsel on behalf of the State make no contention that if a sale for taxes had taken place and a third person became the purchaser, the State could pass a law changing the status of the parties to the transaction. The law fixing the period of redemption at the time of the sale would become a part of the contract. We maintain, however, that the State could sell the land again for the next year's tax, notwithstanding the lien for the previous year had been exhausted, as it were, and merged in the sale. So in the case at bar, the proposition does not fit the facts. The highest court of Texas, in construing this law, has said that its terms do not include the collection of the taxes for the year 1884. As we understand the decisions, this honorable court will follow the construction of the highest State court when no Federal question is involved in the State statute construed. It could certainly not be contended that leaving off or putting in a certain year (viz.: 1884) as the limit of time beyond which the statute does not extend for the purpose of collecting taxes, could involve such a question. The question presented to the Supreme Court of Texas, as well as this honorable court, is the right and power of the State of Texas to collect taxes for the year 1885 and subsequent years where no process of the State has ever issued for the collection of such taxes. An examination of the Transcript of Record (pp. 9 to 19), constituting the statement of facts as proved on the trial of the case, will support the above statement.

ARTICLE 8, SECTION 15, STATE CONSTITUTION, provides: "*The annual assessment made upon landed property shall be a special lien thereon * * * and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.*"

CHAPTER 103, SECTION 2, provides: "All lands or lots which have *been returned delinquent*, or reported *sold to the State*, * * * shall be subject to the provisions of this act, and said taxes *shall remain a lien upon said land*, although the owner be unknown or though it be listed in the name of a person not the actual owner, and *though the ownership be changed*, the land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to be due by such assessment *for any preceding year*." The very words of the statute show that the act does not attempt to create a lien and impose the same retroactively where none existed before, but merely declares that "said taxes shall *remain a lien* upon said land," etc.

The lien was created by the Constitution and fixed by the *annual assessment*. We candidly confess that we doubt the power of the Legislature to impose a lien upon property listed in the name of a person not the owner unless the description is otherwise sufficient to identify the property. This, however, is not involved in this case, and if it were it should be raised at the proper time, in accordance with the rules of pleading in force in this State.

Redemption acts are in their nature remedial, and may be changed at any time, though the terms imposed be retroactive.

Flinn vs. Parsons, 60 Ind., 573, *et seq.*, presents a case of a delinquent tax sale where the law, authorizing redemption upon a failure of the purchaser's title, fixed the interest at 6 per cent. In 1872, an act was passed which repealed all former laws in conflict therewith and fixed the rate of interest to be paid by the owner at 25 per cent. The court holds that the law in force at the time of sale does not control, or, as claimed by counsel in the case at bar, fix the status of the parties to the sale. It was held to be retrospective in its purpose and "*intended to apply, in the most comprehensive terms, to the holders of all tax deeds, without reference to the time at which any of the tax sales took place.*"

Counsel for plaintiff in error cites Desty on Taxation (pp. 1011 to 1020) on the question of the enforcement of tax liens where the tax sales were, for any reason, declared illegal. In all the cases examined, which are there cited, we do not find one applicable to the case at bar, where the owner of the land and the State are the parties at interest. All of them relate to the case where a third person, at a sale for delinquent taxes, bid for and acquired the property upon payment of the taxes. Upon failure of the tax deed

to pass title, a statute provided that the owner should reimburse the one who, in good faith, had paid the delinquent taxes; thus being substituted, as it were, to the lien of the State, the owner of the land having received the benefits thereof.

In this case, no money for the taxes of 1884 was received by the State, and consequently the lien was not discharged.

In this State there is no statute of limitation which runs against taxes owing to the State or county. After the lien for taxes has attached to real property, it follows such property, and there can be no subsequent purchaser without notice, nor person holding a title superior to the claim for taxes.

It has been decided by the Supreme Court of this State that if there was no valid assessment of the property prior to the time of his ownership, no lien attached and a subsequent purchaser could not be made liable for the taxes which were supposed to have been due and delinquent. State vs. Farmer, 59 S. W. Rep., 541.

If the plaintiff in error had shown upon the trial of this case that the taxes for the year 1884 were not properly levied or assessed, or that the sale was not according to law, then such sale could and would have been set aside. Whether any lien existed for years subsequent to 1889, when this plaintiff in error became the owner, was a question dependent upon the facts.

In view of the facts of this case, as disclosed by the record, this court is presented with a valid sale for the taxes of 1884 and a purchase by the State, a lien for the taxes subsequent thereto being the years prior to 1889 and also since the ownership of the plaintiff in error. While counsel insists that the law impairs a vested right, and by its method of procedure attempts to and is an evasion of due process of law, shutting out any defense other than payment of the tax, we assert, with full confidence, that the law affords every reasonable opportunity to a delinquent taxpayer to have his day in court, and to show the invalidity of a sale, levy or an assessment. No court of this State has decided otherwise, or that property of the individual can be confiscated under the sanctity of a tax deed.

In answer to the proposition submitted by plaintiff in error on page eleven (11) of his brief, we submit the following

COUNTER-PROPOSITION.

It is within the power of the Legislature to provide whatever procedure seems best adapted for collecting taxes and for foreclosure of the lien which is given by the Constitution and the laws; such law being one which affects the remedy and not depriving delinquents of any substantial rights.

AUTHORITIES.

21 Ohio State, 210.
15 Wall., 300, 319.
19 Wall., 227.
65 Texas, 619.
73 Texas, 343.
26 S. W. Rep., 619.
92 Texas, 319.
Clarke vs. Strickland, 2 Curt., 493.
Hodgdon vs. Burleigh, Vol. 4 Fed. Rep., p. 111.
Masterson vs. State, 42 S. W. Rep., 1003.
Conklin vs. City of El Paso, 44 S. W. Rep., 883-4.
Traylor vs. State, 46 S. W. Rep., 81-2.
Fristoe vs. Blum, 92 Texas, 80.

ARGUMENT.

Not desiring to take a position before this Honorable Court which we do not believe is sound in principle, we frankly say that that part of Section 13 of the act which states "That any delinquent taxpayer whose lands have been *returned delinquent* * * * may redeem the same at any time before his lands are sold under the provisions of this act by paying to the collector the taxes due thereon since January 1, 1885, with interest at the rate of six per cent. per annum," etc., can not as to the six per cent. interest be sustained under the above proposition. It certainly, as contended for by plaintiff in error, does not constitute any part of the costs of procedure. However, we do not think that it was improperly taxed up against *this defendant* under the particular facts of this case, which we will undertake to show further on. As to the other items of cost, we do not think they are retroactive or at least not in contravention of "due process of law" within the meaning usually given to that term.

The lien having been fixed by the Constitution and the law, and such lien being still in full force and effect by reason of the non-payment of taxes, the Legislature can provide for the foreclosure of the lien, which carries with it the *necessary cost of such procedure*. The defendant acquired the property with full knowledge of delinquent taxes against it. It was both his right and his duty as a citizen to pay such delinquent taxes and relieve it of the lien against it. Not having seen proper to do so, he can not now be heard to complain of necessary costs of suit. He is *in default*, and by all the principles of law he is estopped from setting up as a defense a condition of affairs caused by himself. He acquired the property in 1889, and had not paid the tax up to the time of the passage of the law.

He is in default since the passage of the law in question, for the reason that he had sufficient notice of the *public* law and sufficient time thereafter to pay the taxes before any of the costs as provided by this law had accrued. Defendant, it is true, did not *assume* the payment of the taxes, being a subsequent purchaser. The duty to pay taxes is not one which arises by reason of a contract, either express or implied. It is a demand made in the exercise of the sovereign power of the State.

We call the attention of the court to the fact that *part* of the taxes sued for herein were levied and assessed since this defendant became the owner of the property in 1889, and since the passage of Chapter 5a, Title 104, of the Revised Statutes of 1895. We quote from the opinion of Fristoe vs. Leon & H. Blum, decided by the Supreme Court of Texas, 92 Tex., 80: "It is well settled that so long as the State is engaged in making or enforcing laws or in the discharge of any other governmental function it is to be regarded as a sovereign and has prerogatives which do not appertain to the individual citizen," etc.

"We prefer, however, to put this decision upon the broader ground and stronger position that where a right exists the Legislature may give a new remedy, provided it does not deprive either party of a substantial right," p. 83, and citing authorities. If the tax suit provided for by the act in question is a method of procedure or appertains to the remedy and does not deprive the delinquent taxpayer of any substantial right, then it is not inconsistent with due process of law. Can this Honorable Court say that the costs provided for are *not reasonable?*

The case of 44 Conn., 291, cited by counsel, is not analagous to the one at bar. In that case the statute attempted to make the "owner" of a carriage responsible for any damage resulting from the carelessness of the driver. There was no necessary or other relation between the owner and driver in the *resultant* damage. In the case at bar, all the extra costs are the direct result either of the carelessness or wilfulness of the defendant, for which he ought to be responsible.

The case of G. C. & S. F. Ry. vs. Ellis, 165 U. S., cited by plaintiff in error, in which a statute of this State was declared unconstitutional because it was *class legislation*, is not applicable to this case. This act refers to all delinquents alike. The terms imposed are the same for all property regardless of the owner.

Counsel for plaintiff in error admit that it is within the power of the Legislature of a State to impose prospectively a penalty upon delinquents for failure to pay taxes. We will not controvert the contention of counsel for plaintiff in error that the six per cent. interest imposed by Section 13 of the Act of 1897 is a penalty; nor the further proposition that interest is not an incident of a tax and cannot be exacted without statutory authority. The Texas cases cited in the brief of opposing counsel fully sustain the position that a tax is not a debt, bearing interest within the purview of our interest statutes.

In the case of Lydecker vs. Palisade Land Co. et al., 33 N. J. Eq., 416, a mortgage having been given on a piece of property in 1872, the complainant contended that said mortgage lien was superior to a tax lien created by a law of 1879 for the taxes of 1879 and 1880. The court says: "But it is established that the Legislature has power, by virtue of its sovereignty, to make taxes a lien upon the estate of all parties interested in the land, and to make the tax title paramount to all other and prior claims and encumbrances."

In the case just cited, the court sustained the power of the Legislature to enact not only a retroactive law, but one which affected injuriously the rights of third parties.

In the case of State vs. Mayor, 42 N. J. L., 38, where the construction of a provision in the charter of the City of Newark was under consideration, the court says: "It must be admitted that the lien of the tax levied on the land is superior to the lien of the prior mortgage," etc. (p. 44). Further, "This relates exclusively to real estate assessments, and could not apply to personal estate taxes. In

assessing the latter, the person assessed is not named as the owner of real estate. This clause shows that the draftsman had in mind only the taxes upon real estate, and that it was his purpose to secure their payment beyond any contingency. This was a wise, and, perhaps essential, measure for the collection of the public dues, and there is manifest in it no injustice" (p. 45).

The plaintiff in the case of Morrison vs. Larkin, 26 La. Ann., 701, contended that a tax law of the State of Louisiana was void as being in contravention of the State Constitution and also Section 1, of Article 14, of the amendments to the Constitution of the United States. The court says:

"That the State has the power to levy and collect taxes can not be doubted; and that she can impose damages for non-payment of the taxes after due notice, is equally certain. The implied contract of every citizen of the State, is to bear his share of the common burden of taxation to support the government. If he should fail to meet this obligation there is no reason why he should not pay damages for breach thereof.

"Having power to collect taxes, the State has authority to use whatever means that are necessary to accomplish the object. The law authorizes the forfeiture of the land to the State after due notice has been given to the owner, and reserving to him the right of redemption on paying certain damages and costs, we regard as a legitimate means employed by the State to collect her revenues. If there were no damages and no forfeiture, how could the State collect taxes, if from combination among bidders or otherwise, no one would bid for property when offered for sale? Without the fear of penalties and forfeiture of his land to the State, an obstinate taxpayer might successfully withhold from the State her legitimate revenues. We find nothing in the law authorizing the forfeiture of the lands to the State for non-payment of the taxes after due notice, repugnant to the articles of the State Constitution relied on by the plaintiff. Nor is it in contravention of Article 1 of the Fourteenth Amendment of the Constitution of the United States."

To the same effect is the case of High vs. Shoemaker, 22 Cal., 370. The court says: "The taxpayer is allowed until the third Monday of October to pay his taxes, and if at the close of that day he is in default, then further proceedings are to be taken to enforce the judgment. Among other things, the delinquent is charged five per cent. upon the amount of his tax. This is not an equivalent for

the tax, or a substitute for it, or a sum fixed, by the payment of which an atonement is made for the default to pay the tax, but is one of the means prescribed for obtaining the tax itself by presenting an inducement to make voluntary payment on or before the day fixed for that purpose. We cannot say that it was not competent for the Legislature to authorize this percentage to be collected in the same way as the fees of the officers made necessary in other proceedings to enforce the payment of taxes."

But in answer to the above, counsel for the plaintiff in error would say that it is not denied that it is within the power of the Legislature to add penalties for the non-payment of taxes within a certain time, but that the operation of such a law must be prospective; that in the case at bar the six per cent. interest is retroactive and is added as a penalty against the delinquent, there being no such interest or penalty due at the time the taxes were assessed and became due.

I refer to the case of Worthen vs. Badgett, 32 Ark., 529-532, as bearing directly on this point. The appellees failed to pay the taxes due upon the lands for 1873. Before the sale of the property the Legislature extended the time for the payment to April 20, 1875, upon payment of taxes and costs *without any penalty*. Before the expiration of the above mentioned period the Legislature, February 22, 1875, passed another extension act for the benefit of delinquents as to the taxes for 1873 and 1874, extending the time of payment to March 31, 1876. "By Section 3 it was made the duty of the clerks of the several counties, in making out the tax books for the year 1875, to include such delinquent list for the years 1873 and 1874, together with a penalty of fifteen per centum on such delinquent taxes, which should be collected as other taxes, and paid in the treasury as required by law."

The court says: "Had appellees paid the taxes legally due upon their lands for the years 1873 and 1874, by the 20th of April, 1875, no penalty could have been imposed upon them for the other years. But as they thought proper to avail themselves of the grace offered by the Act of the 22nd of February, 1875, they accepted it on the condition upon which it was offered; that is, they should pay a penalty of fifteen per cent. upon their delinquent taxes for the two years. That was a compensation to the public for being deprived of the use of the money during the period of grace allowed the taxpayers. There must, however, be no compounding of penalties. A

single penalty of fifteen per cent. upon the legal taxes for the two years is all that can be exacted."

The same doctrine is announced in the case of State vs. Certain Lands, 42 N. W. Rep., 476. While that case was reversed because of the fact that certain illegal taxes were included in the assessment, yet the principles announced are, we think, sound.

The facts of the case, Smith vs. Auditor General, 20 Mich., 398, presents a question almost identical with the one involved in the case now before this court. Property belonging to Smith became delinquent for the taxes for 1868. Under the law then in force, office charges and 15 per cent. interest were assessable against the person as a penalty for the delinquency. The law of 1869 made the rate of interest 30 per cent. on delinquent taxes. While in this case Judge Cooley, rendering the opinion, decided that the statute did not contemplate taxes already assessed, he announces, as we think, the proper doctrine in the following:

"We do not understand it to be questioned that it was competent for the Legislature to make the general provisions of the Act of 1869 apply to the taxes previously assessed and returned, so far as the subsequent proceedings to be taken by the State were concerned, if they had seen fit to do so. The question is, whether they have expressed an intention to that effect. Unless that intention distinctly appears, the familiar rule of construction which presumes that legislation is designed to have prospective operation only, will require the court to hold that the legislative purpose was that this act should apply only to taxes subsequently assessed.

"For although to apply to the taxes previously levied would not, so far as the course of official proceedings for the enforcement thereof is concerned, be strictly retrospective in the proper sense of that term, yet so far as it increased penalties, or in any manner affected the taxpayer's rights or interest as they depended upon previous acts or delinquencies, it would be plainly so, and the purpose of the Legislature to give it that operation is not to be presumed where the words are ambiguous or reasonably susceptible of a different construction."

As said by the distinguished judge just quoted, a statute should not be construed as having a retroactive effect, unless such intent clearly appears.

In the case at bar, there is no room for construction. The legislative will is clear.

SECTION 2 provides, that "*All lands or lots which have been returned delinquent, or reported sold to the State, etc.,* * * *, *or which may hereafter be returned delinquent or reported sold, etc.,* * * * *shall be subject to the provisions of this act, etc.*"

SECTION 13 provides, "Any delinquent taxpayer whose lands *have been returned delinquent* or reported sold to the State for taxes due thereon, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this act by paying to the collector *the taxes due thereon since January 1st, 1885*, with interest at the rate of 6 per cent. per annum and all costs and the penalty of 10 per cent., as provided for in Section 10 of this act; provided, such penalty has accrued under the provisions and since the passage and taking effect of this act."

We contend that even in applying a very strict test to the above provisions, they are not, properly speaking, retroactive. Has the plaintiff in error had an opportunity to pay the delinquent taxes, unaffected by the question of costs and interest? If so, he has no just cause of complaint. The statute was passed by both branches of the Legislature and became a law in April, 1897, but not having passed by the requisite number of votes as prescribed by the Constitution, did not become effective till ninety days after the adjournment of the Legislature, viz.: ninety days from May 21st, 1897. During all this time plaintiff in error, after full notice, was delinquent in the payment of his taxes and defaulted in his duty to the government which was protecting him in his life, liberty and the pursuit of happiness. We believe that this Honorable Court cannot say that the small sum of 6 per cent., the statutory rate of interest where none is provided by contract, is unreasonable.

To meet the *third specification* of error we submit the following

COUNTER-PROPOSITION.

The Legislature has the power to waive any rights which may have accrued to the State by reason of a sale to the State of property delinquent for taxes. The courts, in the trial of a case, are limited to the issues made by the pleadings of parties to the suit. It is necessary to prove only those issues which are in dispute.

AUTHORITIES.

Sampson vs. Mercer, 68 Texas, 188.
Ogden et al. vs. Bosse, 86 Texas, 344.

ARGUMENT.

Under our second proposition, we contended that the Legislature had the power to impose a penalty for taxes already assessed, but which were delinquent; and that if notice was given to the delinquent taxpayer of such increased burdens, and an opportunity was afforded him to pay his taxes before the accrual of such penalty, such legislation was not retroactive, and does not contravene the Constitution. We call the court's attention to the fact that counsel for plaintiff in error constantly refers in the course of his argument to a *second sale* for the *same taxes*. If this honorable court is to decide this case upon the record, such question is not presented. The Court of Civil Appeals reversed and reformed the judgment of the trial court by eliminating the tax for the year 1884. The record shows that there was no sale other than for the taxes of that year. Hence, under the judgment of our Supreme Court there will be no second sale for the *same taxes*. The Legislature has seen proper in enacting Chapter 103 to waive the title of the State where sale had been made for the non-payment of taxes and the property bid in by the State, and place the same again within reach of the owner.

This is more equitable than absolute forfeiture. After sale by which the title of the owner is divested, there still remains the equity of redemption for a certain period of time. This is true only of property sold by the tax collector under his power of summary seizure and sale, which power was granted by the Legislature under the provisions of Section 13, Article 8, of the Constitution. After the period of *two years thus prescribed* shall have elapsed, the Legislature has full authority and power to prescribe the terms of redemption, *not restricted by the words of the Constitution "upon the payment of double the amount of money paid for the land."*

In the case of Conklin vs. El Paso, cited above, and in which a writ of error was denied by the Supreme Court, the court says: "It is apparent that payment of taxes and interest from 1885 to 1895, at 6 per cent., would be less than the sum defendant would

have been obliged to pay under the laws as they existed at the time of the sales, in order to redeem the property * * *. There is nothing to prevent the owner in such a case from not insisting on the right to redeem given him by the statute. But if he defends, and seeks to avail himself of the benefits thereof, he, it seems, should be held to do so on the terms it provides," etc.

The counsel for plaintiff in error argues that the State could not directly sue and collect from the owner or claimant the amount required for the redemption of property sold to the State by the collector and consequently can not enforce a collection of the tax and the costs as provided by Chapter 103, which he claims is virtually the same result. It is not claimed on the part of the State that such can be done as against the will of the owner.

It is true that in the petition filed by the State of Texas, against plaintiff in error, it is averred, "*that the defendant is justly indebted to the State of Texas and the county of San Augustine in the sum of thirteen hundred and five dollars and eighty-seven hundredths dollars ($1,305.87), taxes and interest due on the lands hereinafter described*," *etc.* (Subd. 3, Trans. p. 1.) But it is further averred, "that the *said several sums of money* due and owing said State and county as aforesaid are *a charge and lien* upon the following described land and real estate, towit," (Subd. 5, Trans., p. 2) and further, "premises considered, plaintiff prays that the defendant be cited in due form of law and for *judgment for all taxes, interest, penalties, and costs*, and the *lien be in all things foreclosed*, and *that the lands be sold to satisfy said judgment*," etc.

It will be observed that the law (Ch. 103) does not contemplate a *personal judgment* against the owner or claimant at the time suit is brought.

The opinion of the Court of Civil Appeals states, "*The judgment of the court below will be reformed so as to omit the taxes for 1884 and all penalties and to show no personal recovery against the defendant for the amount of the taxes, interest and costs adjudged to be due and thus reformed will be affirmed.*" (Trans., pp. 24-25.)

As was said in the opinion of the Supreme Court of Texas, "The claimant of the lands being a party defendant, could have disclaimed any interest in it and might thus have escaped any cost for proceedings had after such disclaimer." (Trans., p. 45.)

In this character of case, viz., the collection of delinquent taxes, the Legislature has required greater strictness of pleading. In Sec-

tion 6 of this act is the following: "The petition in such suits shall be signed by the attorney bringing the suit, and shall be verified by the affidavit of said attorney, or the county judge, to the effect that the averments contained in said petition are true to the best knowledge and belief of affiant, and the pleadings of the defendant, except those of law, shall be verified by like affidavit of the defendant, his agent or attorney." Doubtless the purpose of this requirement was to force parties to settle down to specific issues and thus divest the case of all unnecessary pleadings. Under our practice, ordinarily one may plead any and all things, both of law and equity, setting up inconsistent and contradictory pleas. Not so with tax suits. The necessities of the government must be met, and met promptly, otherwise the efficiency of the administration of public affairs will be greatly impaired and the very existence of government itself threatened. The Legislature of Texas is supposed to have been aware of the serious condition of affairs by reason of so many failures to pay taxes, as evidenced by the sentence immediately preceding the above quotation, to the following effect: "All suits to enforce the collection of taxes, as provided in this act, shall take precedence and have priority over all other suits pending in the district court." (Sec. 6, Ch. 103.)

Now, taking defendant's answer, set out on pages 4 and 5 of the transcript of record, we find the first eleven subdivisions are matters of law. That part which is capable of verification follows the general denial. We quote it at length: "And, further answering, defendant shows that he purchased the lands described in plaintiff's petition and exhibits about the year 1889, and that said lands have been sold by the collector of taxes of San Augustine county for 1884 taxes and for taxes of subsequent years, and they have been in every instance bid in by the collector of taxes for the State of Texas in obedience to the laws of said State, and the officers and agents of said State are attempting in this suit and by their demands on this defendant, made under and by authority of alleged laws of said State enacted long after said sales were made, to ignore said sales and avoid the legal effect of said sales, and said State by its said pretended legislation and by its officers and agents is endeavoring to deprive this defendant of his said lands acquired by him after said land had been sold and bought in by said State. Wherefore defendant prays that he may go hence with his costs." (Trans., p. 5.)

Defendant's general denial applies to every necessary allegation of the petition. What is the purport of the rest of the answer? If title to the land in question did not pass to the State by reason of the sale for the taxes of 1884, how is the State attempting to ignore said sales and how or in what manner to avoid the legal effect of said sales? Counsel for plaintiff in error nowhere attempts to tell us the legal effect of a summary sale for taxes. It either passed title or failed therein. If it failed therein, the State still had a lien for the taxes for which the sale was made and no injury is done that the State should finally collect at the end of a long and vexatious litigation that which should have been paid voluntarily. But plaintiff in error insists on the State recognizing the legal effect of the sale. Under the pleadings as set forth, we do not think that the defendant was prevented from showing the irregularity of the sale for taxes of 1884. The delinquent tax record, as introduced in evidence by the county attorney on behalf of the State, was only *"prima facie evidence that all the requirements of the law have been complied with by the officers charged with any duty thereunder, as to the regularity of listing, assessing, levying of all the taxes therein mentioned, and reporting as delinquent or sold to the State any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge."* (Sec. 3, Ch. 103.) With the case thus made out, without any proof as to any irregularity in the levy, assessment or sale, can this Honorable Court say that the State of Texas did not have title to the land—such title as would justify the State in imposing the insignificant penalty of six per cent. as a condition of redemption. The opinion of the Supreme Court of Texas is based upon the case as made out by the proof in the manner above indicated. We quote the following. *"This conclusion is based upon the fact that the title in the State is perfect, and it is not intended to express an opinion on the question when the proof does not show this fact."*

An almost parallel case is presented on the pleadings in the case of Morrison vs. Larkin, 26 La. Ann., 700. This was an appeal from the decision of the trial court granting an injunction against the defendant, tax collector of the parish. The court says:

"The right of the defendant to sell the property of taxpayers for taxes under Act 47 of the Acts of 1873 is not disputed. But the plaintiff contends that his authority does not extend to the sale of lands forfeited to the State, as his was, under Sections 66, 67 and

68 of Act No. 42 of the Acts of 1871. The plaintiff can not assume this position without putting himself out of court, because, if his lands were forfeited to the State in pursuance of said act, the only right remaining to him is the right of redemption under Section 69 of said act, and until he chooses to exercise this right he has no more interest in said lands than any other individual. Disavowing title and setting up ownership of the State as a ground to resist the sale proposed by the tax collector, the plaintiff stands before the court without cause of complaint: he has no pecuniary interest and can not be relieved. Besides, if the defendant has no authority to sell the lands forfeited to the State, no title will pass to the purchaser, there will be no change of ownership, and the plaintiff cannot be injured."

Thus it will be seen that counsel for the State do not contend that a tax title does more than convey the title of the owner at the time the taxes were assessed. In making this admission, however, we insist that the lien may be valid though the property is assessed to "unknown owners." As the manner of compelling the appearance of proper parties to the suit is a method of procedure, the Legislature may change it at any time. Plaintiff in error cannot complain as to other parties left out of the suit, because he was properly cited and made due appearance. Having made his appearance, he has every right accorded to all defendants in the State of Texas. He has his day in court, and may disclaim and thus avoid all costs of suit. He may show the invalidity of the levy or assessment of the taxes for the years previous to 1889, the time he became the alleged owner, and thus the property will not be burdened with the lien for such taxes. (State vs. Farmer, 59 S. W. Rep., 541.) He might have shown that the sale for the taxes for the year 1884 was void, or that there was no valid assessment of taxes for years subsequent to 1889, and the Supreme Court of Texas would have been called upon to say whether 6 per cent. interest could, under such circumstances, be imposed or whether plaintiff in error was at all delinquent—no taxes being due—and therefore not liable for the payment of any penalty and the necessary costs of suit. But this evidence was not produced and the court did not pass on any such supposed condition.

In the case of Raymond's Lessee vs. Longworth, 14 How., 46, which presented the question of certainty in the description of property sold at a tax sale, the court says: "And, as the State

courts have settled what certainty is required, it is our duty to follow their decisions on the State laws regulating proceedings in cases of tax sales. We accordingly order the judgment of the circuit court to be affirmed."

The case of Windsor vs. McVeigh, 93 U. S., 274, cited by counsel for plaintiff in error, is not in point. In that case the defendant made his appearance by an answer filed, setting up his claim to the property in controversy, and upon motion of the United States district attorney, his answer was struck off the files and he was given no hearing. Thereupon judgment was entered as if upon default of parties defendant.

We respectfully submit to this Honorable Court:

1st. That this court has no jurisdiction, because the Supreme Court of the State of Texas did not decide a Federal question against the right of plaintiff in error.

2nd. That if there is a Federal question involved giving this Honorable Court jurisdiction, such question was rightly decided by the State court, and the judgment should be affirmed.

3rd. If a Federal question was erroneously decided by the State courts, the judgment herein can be maintained upon the decision made upon a question purely of local State policy, and the Federal courts should hesitate to disturb said judgment.

4th. If the State court erroneously decided both the Federal and State questions, then we ask this Honorable Court to modify and render such judgment as the record of the case merits.

Respectfully submitted,

C. K. Bell, Attorney General,

D. E. Simmons, Assistant Attorney General,

Counsel for Defendant in Error.

Supreme Court of the United States.

No. 137.—October Term, 1901.

J. C. League, Plaintiff in Error, vs. The State of Texas. } In error to the Supreme Court of the State of Texas.

[February 24, 1902.]

On August 6, 1898, the State of Texas filed a petition in the district court of San Augustine County, Texas, averring that the defendant was justly indebted to the State of Texas and the county of San Augustine in the sum of $1,305.87, on account of taxes, interest, penalties and costs due on certain described lands for the years 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1894, 1895 and 1896. The prayer was for a recovery of the taxes, interest, &c., and for a decree establishing and enforcing a lien upon the several tracts for the amounts found due upon each. An answer was filed and a trial had, which resulted, on September 9, 1889, in a finding that there was due the State the amount claimed for taxes, &c., a decree that the State recover the amount thereof from the defendant, and adjudging a lien upon the several tracts therefor, and directing a foreclosure and sale. On appeal to the Court of Civil Appeals the decree was modified by striking out the taxes of 1884, all penalties and the personal judgment against the defendant, leaving the decree to stand as a finding of the amount due for taxes subsequent to the year 1884, interest and costs, and a foreclosure of a lien therefor upon the several tracts. This modification reduced the amount of the recovery to $1,232.77, with interest at 6 per cent from September 9, 1899, the date of the decree in the district court. On error to the Supreme Court of the State the decree of the Court of Civil Appeals was affirmed, (93 Texas, 553;) whereupon this writ of error was sued out.

Mr. Justice Brewer delivered the opinion of the Court.

In 1897 the legislature of Texas passed an act for the collection by judicial proceedings of delinquent taxes upon real estate. (Texas General Laws, 1897, c. 103, p. 132.) The contention of the defendant, now plaintiff in error, is that prior thereto the collection of taxes was enforced by an administrative sale made by the collector of taxes after January 1 of the succeeding year; that the State's lien for taxes was merged in the estate passed or vested by that sale; that the status of the rights of the State or

other purchaser was fixed by the sale and must depend upon the legality of the title acquired under the collector's deeds, and that any right of a purchaser at such sale, whether State or private individual, to revive or continue any lien for taxes must depend upon some statute existing at the time of the sale; and that hence this act of the legislature providing for the collection of delinquent taxes by judicial proceedings was a violation of the constitutional guarantee of due process in so far as it avoided the legal effect of the prior administrative sale and directed a further and judicial sale with the rights attending thereon.

There is no pretence that the taxes levied for these several years were invalid, or that the proceedings up to and including the collector's sale were irregular. On the contrary, the delinquent tax record in evidence, duly certified and filed, which by section 3 of the act is made *prima facie* evidence of the regularity of all prior proceedings and also that the amount of the tax against any real estate is a true and correct charge, showed taxes due as found by the court. It does not appear that the lands were assessed to the defendant or that he was the owner of them at the time of the early assessments. Indeed, he alleges in his answer that he acquired title about the year 1889, but does not allege that this title was from the State. Apparently he had purchased from some individual who claimed title. His argument assumes that the taxes had not been paid and that the lands had been sold by the collector to the State. The case, therefore, presented is one of a party, admitting that valid taxes have been duly levied on his property and have not been paid, who is contesting the manner in which the State shall collect them, and insisting that the only method which it can adopt for such collection is one which has hitherto proved ineffectual.

That a State may adopt new remedies for the collection of taxes and apply those remedies to taxes already delinquent, without any violation of the Federal Constitution, is not a matter of doubt. A delinquent taxpayer has no vested right in an existing mode of collecting taxes. There is no contract between him and the State that the latter will not vary the mode of collection. Indeed, generally speaking, a party has no vested right in a mere matter of remedy; that is subject to legislative change. And a new remedy may be resorted to unless in some of its special provisions a constitutional right of the debtor or obligor is infringed. "There is no vested right in a mode of procedure. Each succeeding legislature may establish a different one, providing only that in each are preserved the essential elements of protection." (*Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 570.) That in the new remedy in the case at bar, as well as in the change from the old to the new, there was no violation of the constitution of the State of Texas, is for us settled by the decisions of its highest court. (*West River Bridge Co.* v. *Dix*, 6 How.

507; *Bucher* v. *Cheshire Railroad Co.*, 125 U. S. 555; *Adams Express Co.* v. *Ohio*, 165 U. S. 194; *Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S. 685.)

Defendant further contends that interest, expenses and costs are included in the new remedy by judicial proceedings which were not provided for by the prior statutes in reference to collector's sales. The Court of Civil Appeals and the Supreme Court of the State dealt with this question in these ways. The latter, in its opinion, quoted the following averment from the sworn answer of the defendant:

"And for answer in this behalf, defendant denies all and singular the allegations of plaintiff's petition; and further answering, defendant shows that he purchased the lands described in plaintiff's petition and exhibits about the year 1889; that said lands have been sold by the collector of taxes of San Augustine County for 1884 taxes and for the taxes of subsequent years, and they have, in every instance, been bid in by the collector of taxes for the State of Texas, in obedience to the laws of the said State."

Upon this it observed that it had granted the writ of error upon a question of the validity of the charge for interest, and added:

"However, upon the point on which the writ was granted, we will say that the answer of the defendant sets up the sale of the lands for taxes and the purchase of them by the State, insisting that the State is bound by its purchase. No attack is made upon the sale nor upon any of the proceedings leading up to it, and it stands before the court, under the defendant's allegations, as a valid sale by which the title passed to the State. The State having acquired the title, had the power to waive its right, and in order to perfect the claim beyond all dispute, to foreclose its lien on the land as against the then claimant, and in doing so, had the authority to prescribe such terms as it deemed proper and just. The claimant of the lands being a party defendant, could have disclaimed any interest in them and might thus have escaped any cost for proceedings had after such disclaimer. The defendant chose not to pursue this course, and he has no cause of complaint as the case stands before this court, because, by his own showing, he had no title to be affected by it, and depended solely upon the grace of the State for whatever he might get out of the lands."

The Court of Appeals said:

"The lands were forfeited to the State by the sale for the taxes of 1884, the forfeiture to become absolute in two years. The offer of the State is to waive this forfeiture and restore the land to the owner if he will only pay the taxes accruing since then and six per cent interest thereon, together with the costs which had been incurred in making the sale, and in making up the delinquent lists, and of the suit. The State has waived its right of forfeiture on condition that the taxes, with interest and costs, shall be enforced against the land. This it might do."

Whichever be the true view of the effect of the answer, (and, of course, so far as the two courts differ, we must accept the view expressed by the highest court of the State as controlling,) the same result will follow. Whether the title which passed by the sale was conditional or absolute,

the State may waive the rights obtained by such sale and prescribe the terms upon which it will waive them. In the one view it waives the right to a forfeiture; in the other, the title acquired by the sale; and in either case the State may fix the conditions of its waiver.

The costs referred to are simply the ordinary expenses which attend proceedings of the character prescribed, to wit, compensation to the collector for preparing the delinquent list and certifying it to the commissioners; to the county attorney for conducting the suit; to the sheriff for selling the land, and to the district clerk for making the court records. There is no pretence that any separate charge is exorbitant or unreasonable. And if the State is compelled to resort to such proceedings for the collection of its taxes it may provide reasonable compensation for the officials charged with any duty in connection therewith, and incorporate the charges therefor as costs in the case. Liability for these costs and expenses can be avoided by payment of taxes, and a delinquent taxpayer, one who fails to discharge his obligations to the State, compelling it to go into court to enforce payment of the taxes due upon his land, has no ground of complaint because he is charged with the ordinary fees and expenses of a law suit.

While the matter of interest stands upon a little different basis, yet, so far as the Federal Constitution is concerned, there is nothing to prevent its collection. The statute may be retroactive, but a statute of a State is not brought into conflict with the Federal Constitution by the mere fact that it is retroactive in its operation. In *Baltimore & Susquehanna Railroad Co.* v. *Nesbit*, (10 How. 395, 401,) it was said:

"That there exists a general power in the State governments to enact retrospective or retroactive laws, is a point too well settled to admit of question at this day. The only limit upon this power in the States by the Federal Constitution, and therefore the only source of cognizance or control with respect to that power existing in this court, is the provision that these retrospective laws shall not be such as are technically *ex post facto*, or such as impair the obligation of contracts. Thus, in the case of *Watson et al.* v. *Mercer*, (8 Pet. 110,) the court say: 'It is clear that this court has no right to pronounce an act of the State legislature void, as contrary to the Constitution of the United States, from the mere fact that it divests antecedent vested rights of property. The Constitution of the United States does not prohibit the States from passing retrospective laws generally, but only *ex post facto* laws. Now, it has been solemnly settled by this court that the phrase *ex post facto* is not applicable to civil laws, but to penal and criminal laws.' For this position is cited the case of *Calder* v. *Bull*, already mentioned; of *Fletcher* v. *Peck*, (6 Cranch, 138;) *Ogden* v. *Saunders*, (12 Wheat. 266,) and *Satterlee* v. *Matthewson*, (2 Pet. 380.)"

This decision, it is true, was before the Fourteenth Amendment, and the restrictions placed by that amendment upon State action apply to retrospective as well as prospective legislation. But it contains no prohibition of retrospective legislation as such, and therefore now, as before, the mere

fact that a statute is retroactive in its operation does not make it repugnant to the Federal Constitution.

As the State may, in the first instance, enact that taxes shall bear interest from the time they become due, so, without conflicting with any provision of the Federal Constitution, it may in like manner provide that taxes which have already become delinquent shall bear interest from the time the delinquency commenced. This is adding no novel or extraordinary penalty, for interest is the ordinary incident to the non-payment of obligations.

We see nothing else in the record calling for notice, and, finding no error, the judgment of the Supreme Court of Texas is

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.